

# **MASTERMELT REFINING SERVICES LTD**

## **GENERAL TERMS AND CONDITIONS**

### **BACKGROUND**

Whereas:

1. Mastermelt Refining Services Ltd (“MRSL”) provides services relating to the reclamation and recycling of Materials (as defined below) belonging to its Customers.
2. The reclamation and recycling of Materials provides MRSL’s Customers with an important source of revenue.
3. By contracting with MRSL, MRSL’s Customer is not discarding or intending to discard their Materials.
4. MRSL’s Customer retain ownership of their Materials throughout the reclamation and recycling process at MRSL, until ownership of the Product transfers as described in Clause 9.
5. Consequently, and for the avoidance of any doubt, the Customer does regard its materials as a valuable by-product adding financial benefit to their business, not as a waste requiring disposal at cost.

### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these Conditions.

**Acceptance:** as defined in condition 5.

**Conditions:** These General Terms & Conditions of Mastermelt Refining Services Ltd, as set forth in this document

**Contract:** any contract between MRSL and the Customer for the Services incorporating these Conditions, or any Order where the customer has made Delivery of materials to MRSL.

**Customer:** the person, firm or company who places an Order for the purchase, processing and/or sale of Materials with MRSL.

**Delivery:** the delivery of the Materials to MRSL's premises or those of MRSL's nominated agent in accordance with condition 4 below.

**Materials:** all substances and materials the subject of the Customer's Order delivered in accordance with condition 4 in connection with the Services.

**Material Receipt Report:** The Report issued by MRSL to the customer which records a batch of Material received from the customer including material type, weight and batch number.

**MRSL:** Mastermelt Refining Services Ltd, a UK company with registered office at at 30 City Road, London EC1Y 2AB.

**Order:** means any order for the Services by the Customer, whether communicated orally or in written form.

**Product:** any precious metal containing residue recovered from the Materials following processing.

**Services:** means Service A, Service B, Service C, and/ or Service D.

**Service A:** the purchase of the Materials from the Customer by MRSL.

**Service B:** the receipt, processing, and refining of the Materials and the sampling, evaluation, assay and purchase in money of the Product from the Customer by MRSL.

**Service C:** the receipt, processing, and refining of the Materials and the sampling, evaluation, and assay of the Product with transfer of metal to the Customer.

**Service D:** the receipt, processing, and return of the processed Materials to the Customer, for a toll processing fee.

**Settlement Date:** the forecasted date on which metal or money is expected to be transferred to the customer with respect to a specific batch of Material.

**Settlement Yield Statement:** the document issued by MRSL which offers the metal or money payable to the customer for the Product that has been recovered from a specific batch of Material;

**Working Days:** Monday to Friday excluding UK bank holidays and Christmas closedown.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

## **2. APPLICATION OF TERMS**

2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase Order, confirmation of Order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase Order, confirmation of Order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Services and any variation to these Conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of MRSL. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MRSL which is not set out in the Contract.

2.4 Each Order or acceptance of a quotation for Services by the Customer shall be deemed to be an offer by the Customer for the Services subject to these Conditions.

2.5 No Order placed by the Customer shall be deemed to be accepted by MRSL until the Customer has approved the Material Receipt Report and MRSL has undertaken Acceptance of the Material.

2.6 The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until Acceptance.

### **3. WARRANTY**

3.1 The Customer warrants:

3.1.1 that it is the absolute legal beneficial owner of the Materials free from all liens, charges and encumbrances or other adverse rights or interests whatsoever;

3.1.2 that processing of the Materials by MRSL will not affect, compromise or infringe any third-party rights existing or arising in connection with the Materials; and

3.1.3 that the Materials will not be:

(i) radioactive;

(ii) explosive;

(iii) liable to spontaneous combustion;

(iv) contain certain organo-metallic compounds; or

(v) contain deleterious or penalty elements which include, without limitation, Arsenic, Cadmium, Tellurium, Selenium, Chlorine, Bismuth, Mercury, Bromine, Iodine, Beryllium and Antimony. MRSL may be able to process materials containing these metals but only after prior agreement, and reserves the right to extend the Settlement Date and levy additional charges.

### **4. DELIVERY, RISK AND INSURANCE**

4.1 Unless otherwise specifically agreed in writing pursuant to these terms, all Materials shall be delivered at the Customer's risk and expense to MRSL's premises or those of MRSL's nominated agent between 9.00am and 4.30pm Mondays to Fridays, public holidays excepted.

4.2 The Materials shall remain at the Customer's risk until the Customer has agreed in writing to MRSL's Material Receipt Report, including gross weight received, at our site. The Customer shall insure the Material accordingly and shall, in the case of overseas customers, provide MRSL with a certificate of insurance giving the name and address of the insurance company's agents in the UK.

4.3 The Customer shall arrange for any claims covered by insurance to be payable in London. Unless otherwise agreed, the value of such insurance shall be based C.I.F. plus a margin of 10%.

### **5. ACCEPTANCE**

5.1 Following Delivery all Materials shall be gross weighed and sampled in MRSL's usual manner and at such time as MRSL may determine.

5.2 Should the Materials be compliant with conditions 6, 7 and 8 below, and should MRSL consider in its reasonable opinion that the Materials are safe and fit to receive the Services, MRSL may issue a Material Receipt Report to the Customer, identifying the batch numbers of Materials received and their gross weight.

5.3 Subject to condition 5.4 and the Customers written Approval of the Material Receipt Report, upon the Materials being prepared for processing by MRSL the Materials are deemed accepted by MRSL for the Services ("**Acceptance**"). MRSL may prepare the Materials for processing in such manner as it may consider appropriate whether on their own or with other materials.

5.4 For the avoidance of doubt, Acceptance will not take place, notwithstanding that the Materials have been prepared for processing, where the Customer's warranty in condition 3 is untrue in any respect.

5.5 Where the nature of the Materials practicably allows, and with MRSL's approval (not to be unreasonably withheld), the Customer may, at its sole expense, be represented or appoint a witness at any weighing or sampling operation prior to Acceptance by a representative approved by MRSL. The Customer shall provide 48 hours written notice to MRSL in advance of delivery of its request to be represented at a weighing or sampling operation. Where such representation or witnessing occurs, the start date to the period before the Settlement Date shall not be earlier than the date of witnessing.

5.6 Absent such notification, or if the Customer's representative shall not be presented as notified, the Customer shall have waived any right to representation and MRSL may proceed to weigh, process, refine, and sample the Materials without the Customer or its representative being present.

## **6. HEALTH AND SAFETY**

6.1 The Customer shall ensure that the Materials comply with the provisions of the Health and Safety at Work etc Act 1974 (the "**Act**"). The Act (inter alia) requires any person who manufactures, imports, or supplies any substance for use at work to ensure, so far as is reasonably practicable, that the substance is safe and without risks to health when properly used.

6.2 The Customer shall also comply with the provisions of the Control of Substances Hazardous to Health Regulations 2002 by giving adequate information about the physical and chemical nature of the Materials, indicating any possible hazards that may arise during treatment. The customer will supply an MSDS applicable to the material being treated.

6.3 The Customer warrants that MRSL, in performing the Services on the Materials, will not be in breach of any environmental rule, law, regulation or instrument whatsoever.

## **7. PACKING**

7.1 In delivering the Materials to MRSL, the Customer shall ensure that all Materials are packed safely and securely so as to conform to current regulations governing the transport of goods. In particular, Materials likely to contain substances of a hazardous nature must be clearly marked as such with appropriate warning labels and an MSDS appropriate for the material sent. The appropriate EWC code should be entered on the delivery note.

7.2 Inadequately labelled Materials may, at MRSL's sole discretion, be held at the Customer's risk and expense following Delivery pending further information on their content. Any delays to the time of Acceptance incurred as a result will be added to the processing time and Settlement Date.

7.3 Unless otherwise agreed, packing shall be non-returnable. The cost of packing material and containers shall be borne by the Customer.

7.4 Where Product is to be sent to the Customer, MRSL shall determine, in its absolute discretion, the manner, mode and form in which the Product may be sent.

## 8. DESCRIPTION AND DOCUMENTATION

8.1 All Materials shall be accompanied by an advice or delivery note giving the gross, tare and nett weight of each container and a description of the contents. The Customer shall ensure that on or before Delivery MRSL receives full instructions as to the precious metals to be determined in the evaluation of the Materials.

8.2 On Acceptance, the Customer shall have no further rights in respect of any Materials for which full instructions were not given prior to Delivery, or any proceeds arising from the sale of such Materials.

8.3 All Materials shipped to MRSL from overseas shall be accompanied by an invoice showing weights, estimated fine precious metal contents and values for customs clearance purposes. If appropriate the relevant Annex VII or TFS Notification document shall accompany the goods.

8.4 Where Materials are shipped by sea, the Customer shall transmit to MRSL the following documents:

- (a) 2 negotiable copies and 1 non-negotiable copy of the bill of lading;
- (b) 1 original and 1 copy of the certificate of insurance;
- (c) 2 copies of the invoice for customs clearance purposes; and
- (d) A packing list stating the contents of each case, the nett and gross weights thereof and the seal numbers.

8.5 It is important that MRSL receives the documents specified in condition 8.3 and 8.4 before the carrying vessel arrives at the destination port in the UK.

8.6 Where Materials are freighted by air, the Customer shall send to MRSL by facsimile or email the Air waybill number and flight details and the following documents:

- (a) The invoice for customs clearance purposes; and
- (b) A packing list stating the contents of each case, the nett and gross weights thereof and the seal numbers.

8.7 The Customer shall maintain detailed accounting records of its transactions with MRSL.

8.8 All waste Materials delivered from Overseas shall comply with either EC Council Regulation (EEC) No. 1013/2016 on the supervision and control of shipments of waste within, into and out of the European Community (the "**Regulation**"), the OECD Council Decision C(2001)107/Final or the UNEP Basel Convention (as appropriate) and also UK Statutory Instrument 2007 No 1711.

8.9 The Customer shall, in accordance with the Regulation, take back waste Materials shipped to MRSL for recovery if the shipment is not completed in accordance with the Contract or if it violates the Regulation.

8.10 MRSL will, in the case of re-transfer of waste Material for recovery to another Member State of the European Union or to a third country, provide the notification of the initial country of despatch.

## 9. OWNERSHIP/ TITLE

9.1 The Materials and such Product as may be obtained from the Materials will continue to be owned by the Customer until the following event occurs in respect of Materials for which Services A, B, or C are provided by MRSL:

- a) the written acceptance by the Customer of the Settlement Yield Statement issued by MRSL; or
- b) within 10 days of the Settlement Yield Statement if no response is received from the customer.

9.2 In respect of Material for which Service D is provided to the Customer by MRSL, the Customer retains title at all times and ownership is never transferred to MRSL.

9.3 The Customer will continue to retain ownership, risk and responsibility of Material for which Acceptance is not given by MRSL.

## 10. PRICE

10.1 In the case of Service A, the price for purchase of Materials by MRSL from the Customer shall be agreed in writing prior to Acceptance.

10.2 In the case of Service B or Service C, the monetary or metal return associated with the Product will be determined, following acceptance, processing, and analysis, by MRSL methodology (the "**Settlement Yield**").

10.3 In the case of Service D, the customer pays MRSL a toll processing charge for the Material, which must be agreed before Acceptance.

10.4 MRSL methodology employs a variety of factors in determining the Settlement Yield including, among others, the character and historic quality of the Customer's Materials, MRSL designated laboratories' analysis and the uncertainties thereof, Customer's estimate or projection of precious metal content in the Materials, the estimated yield on final recovery, MRSL risks and costs, and MRSL refining practices and processes.

10.5 When the Customer is not represented, MRSL will notify the Customer of the Settlement Yield either verbally or in writing in a Settlement Yield Statement and such amount will be final and conclusive unless objected to in writing by the Customer within seven days ("**Notice of Objection**").

10.6 If the Customer serves Notice of Objection on MRSL in accordance with condition 10.5 above, any adjustment to the Settlement Yield will be negotiated between MRSL and the Customer both acting in good faith. If agreement cannot be reached by negotiation within 2 weeks of MRSL receiving Notice of Objection and if the Product is in a suitable form, the Customer and MRSL will endeavour to agree on the appointment of an independent umpire to inspect the Product ("**Independent Inspection**").

10.7 In the case of discrepancy between the Settlement Yield and the findings of the Independent Inspection, the Settlement Yield shall be adjusted, upwards or downwards as the case may be, by the median of the Settlement Yield and the Independent Inspection.

10.8 In the case of Service B, the price to be paid by MRSL to the Customer for the Product will be based on prevailing London bullion or free-market prices, whichever is applicable, for the Settlement Yield.

10.9 In the case of Service C, and subject to condition 11.5 below, MRSL will return to the Customer, at the Customer's risk and expense, precious metals equivalent in the quantity and proportion determined by the Settlement Yield.

## **11. PAYMENT AND INVOICING**

11.1 Following notification of the Settlement Yield, or following the adjustment of the Settlement Yield in accordance with conditions 10.6 and 10.7 above, MRSL will issue an invoice to the Customer stating a time for payment, MRSL's fees, and any charges, costs and disbursements incurred by MRSL in connection with the Services ("**Invoice**").

11.2 In the case of Service B, a statement will be provided with the Invoice which will state the value of the Settlement Yield such value to be based on prevailing London bullion or free-market prices, whichever is applicable, payable by MRSL to the Customer for the Product.

11.3 In the case of Service C, a statement will be provided with the Invoice which will provide a breakdown of the Settlement Yield by weight and type of metal to be returned to the Customer.

11.4 Unless otherwise agreed in writing, in the case of Service B, MRSL shall be entitled to set-off its fees and costs as stated in the Invoice against the value of the Settlement Yield set out in the statement referred to in 11.2 above.

11.5 Where MRSL is providing Service B or C and metals to the amount of the Settlement Yield are to be provided to the Customer, MRSL shall have a lien over the Product until any sums owing to MRSL by the Customer have been met in full. Should an Invoice not be met in full within two months of the date specified in the Invoice for payment, MRSL shall be entitled to sell the Product and apply the proceeds to any unpaid portion of an Invoice and MRSL's reasonable costs of storing the Product and arranging for its sale.

11.6. MRSL will use reasonable efforts to meet the Settlement Date however these are estimates only and time in this respect and time for delivery are not of the essence.

11.7 In the case of Service D, MRSL shall invoice the Customer the agreed toll processing charges for the Material

11.8 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

11.9 If the Customer fails to pay MRSL any sum due pursuant to the Contract, the Customer shall be liable to pay interest to MRSL on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. MRSL reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

11.10 MRSL reserves the right to offset any payables due from MRSL against outstanding debt the Customer owes to MRSL.

## **12. INDEMNITY**

12.1 The Customer shall indemnify MRSL and/or any third party to whom MRSL may sub-contract the whole or any part of the Services against any and all actions, proceedings, losses, claims, costs, damages and expenses whatsoever:

(a) in respect of loss of life, personal injury or damage to property arising directly as a result of:

- (i) any defects or health hazards in the Materials; or
- (ii) any instruction or false or misleading information given or supplied by the Customer in connection with the execution of the Services;
- (b) resulting from the requirements of the Regulation in relation to waste material shipped to MRSL for recovery; or
- (c) resulting from the Customer's warranty under condition 3 being untrue in any respect.

12.2 The customer hereby appoints MRSL as its agent for the purpose of granting an indemnity in identical terms to that contained in condition 12.1 by the Customer to any third party to whom MRSL sub-contracts the whole or any part of the Services.

### **13. LIMITATION OF LIABILITY**

13.1 The following provisions set out the entire financial liability of MRSL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of these Conditions or the Contract; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3 Nothing in these Conditions excludes or limits the liability of MRSL:

- (a) for death or personal injury caused by MRSL's negligence; or
- (b) for any matter which it would be illegal for MRSL to exclude or attempt to exclude its liability; or
- (c) for fraud or fraudulent misrepresentation.

13.4 Subject to condition 13.2 and condition 13.3:

(a) MRSL's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total value of the Services to MRSL, specifically the sum of refining charges, treatment charges, lot charges, toll charges, and the percentage of precious metal not payable to the Customer, as defined in the MRSL Refining Terms commercial proposal; and

(b) MRSL shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

### **14. FORCE MAJEURE**

14.1 MRSL reserves the right to defer the date for performance of the Contract or to cancel the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of MRSL including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or

not relating to either party's workforce), market disruption causing metal to be unavailable or excessively costly to lease, suspension of metal accounts due to decision by or failure of companies holding said accounts, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or refining services, provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to MRSL to terminate the Contract.

## **15. GENERAL**

15.1 The Customer shall not be entitled to assign the benefit of this contract.

15.2 MRSL may, in its sole discretion, sub-contract the whole or any part of the Services including, without limitation, preparing the Materials for processing.

15.3 MRSL may at any time in its sole discretion assign all or part of its rights or interests in these Conditions without prior notice to the Customer.

15.4 Each right or remedy of MRSL under the Contract is without prejudice to any other right or remedy of MRSL whether under the Contract or not.

15.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.6 Failure or delay by MRSL in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.7 Any waiver by MRSL of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

## **16. GOVERNING LAW & JURISDICTION**

16.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.