

OPEN MINERAL AG - GENERAL TERMS AND CONDITIONS OF FOB PURCHASE**1 APPLICABILITY**

1.1 These general terms and conditions shall apply to and supplement all contracts concluded by Open Mineral AG, as Buyer and another party as Seller.

1.2 In the event of any conflict, ambiguity or inconsistency between the provisions of these general terms and conditions and the provisions of the contract confirmation, the provisions of the contract confirmation shall prevail.

1.3 The Seller's failure to promptly notify the Buyer of any objection to these general terms and conditions shall constitute acceptance by the Seller of these terms and conditions. Without limiting the foregoing, the Seller's acceptance of any payment from the Buyer shall constitute acceptance of these terms and conditions.

2 DELIVERY, RISK AND TITLE

2.1 The goods shall be delivered by the Seller as per contract confirmation and specified by the Buyer.

2.2 Delivery shall be deemed completed and risk shall pass to the Buyer in accordance to the ICC INCOTERMS 2010

2.3 Title to the goods shall pass to the Buyer upon provisional payment.

2.4 Time shall be of the essence in performance of the contract. All deliveries shall be made on or before the dates identified in the contract confirmation.

2.5 The Seller represents and warrants that it has good, clean and marketable title to the Material, free and clear of all liens, charges, encumbrances, security interests and claims whatsoever and, upon transfer of title in accordance with this Clause 2.4., the Buyer shall receive good, clean and marketable title to the Material, free and clear of all liens, charges, encumbrances, security interests, and claims. For the avoidance of doubt, the Seller shall obtain appropriate insurance cover over the Material until such time as risk passes in accordance with Incoterms. The Buyer shall obtain appropriate insurance cover over the Material thereafter

3 INSPECTION AND ACCEPTANCE

3.1 All goods delivered hereunder shall be subject to Buyer's Inspection and acceptance. Neither payment for the goods nor passage of title prior to inspection shall constitute an acceptance thereof. The Buyer may request a pre-shipment inspection for moisture determination, assay and radioactivity checking, by an independent internationally recognized supervision company at the expense of the Seller.

3.2 Upon stuffing of the containers, an independent internationally recognized supervision company shall carry out a full weighing, sampling, moisture determination and assaying. The lot size shall be 500 wmt, 250 wmt or any other size of quantity and shall be mutually agreed upon prior to commencement of the container stuffing. The weighing of the cargo and/or containers shall be strictly made by a calibrated truck scale with valid calibration certificate. The cost of this operation shall be borne by the Seller.

3.3 The final and binding weight, moisture and assay shall be basis samples taken at the port of discharge or at the receiving smelter in Seller's option upon unloading of the containers, supervised by a mutually agreed independent internationally recognized supervision company. Should the parties fail to agree on an independent inspection company by the time of the Vessel's arrival at the port of discharge then Buyer shall appoint. The lot size shall be 500 wmt, 250 wmt or any other size of quantity and shall be mutually agreed upon prior. The weighing of the cargo and/or containers shall be strictly made by a calibrated truck scale with valid calibration certificate in place. The final assays shall be made on lot x lot basis for the payable element and on composite basis for the penalty elements. The cost of this operation shall be borne by the Seller.

3.4. Buyer may reject nonconforming goods, and in its sole discretion, may (i) demand immediate replacement and return of such rejected goods at the Seller's expense, (ii) hold pending the Seller's instructions, or (iii) pursue any alternative remedy allowed by law.

4 REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

4.1 The Seller represents and warrants that (a) all goods shipped hereunder, including the manufacture, marketing, distribution, packaging and

labelling thereof, comply with all applicable laws, regulations, orders and ordinances ("laws"), including, but not limited to, all environmental or hazardous substance laws, all health and safety laws, all laws relating to the handling, processing or reclamation of (or other activities associated with) recyclable materials, and all hour and wage payment laws; (b) such goods are sold free and clear of all liens and encumbrances; (c) such goods are free from any defects and are of good and merchantable quality, and are fit for the particular purpose for which purchased hereunder; (d) such goods conform to the quality standards and specifications established by the Buyer as set forth or referenced in the contract confirmation; and (e) such goods shall be delivered by the Seller in good condition.

4.2 The Seller agrees to defend, indemnify and hold the Buyer harmless from any and all claims, liabilities, costs, damages, expenses, fines and penalties (including attorneys' fees) which the Buyer may incur as a result of (a) any breach or alleged breach by the Seller of any representation, warranty or covenant herein, (b) any products liability claim made in connection with the goods purchased from the Seller hereunder, and (c) any act or omission of the Seller which is not related to the contract. The Seller's liability hereunder shall remain unless and until all liability alleged against the Buyer has been extinguished.

5 PAYMENT

5.1. The Payment shall be effected by the Buyer to the Seller's nominated bank in USD or any other currency agreed upon, against presentation of the following documents by the Seller to the Buyer:

5.2. The provisional payment shall be arranged as per contract confirmation and basis presentation of the following documents by the Seller to the Buyer:

5.2.1. Original signed provisional invoice in 3 copies, showing detailed calculation of the cargo value and being based on documents 5.2.2 and 5.2.3. The applicable metal price(s) shall be based on clause 6. In case Q/P has not start, the price(s) shall be based on the market quotations as per clause 6.2. as applicable on the bill of lading date (shipped on board date) or next following market day.

5.2.2 Original certificate of weight and moisture, issued by an independent internationally recognized supervision company to be mutually agreed upon, confirming the weight and moisture at the time of stuffing of the containers.

5.2.3 Original assay certificate issued by an independent internationally recognized supervision company to be mutually agreed upon, advising the content of the payable and penalty elements

5.2.4 Detailed packing list showing the gross/tare/net weight per container, container number and all seal number(s). The packing list shall be in line with the rule of the SOLAS container mass verification requirement

5.2.5 Certificate of origin in issued on Seller letterhead. The Buyer however reserving the right to ask for a Certificate of origin issued by a local chamber of commerce or similar authority.

5.2.6 Certificate of radioactivity issued by an independent internationally recognized supervision company to be mutually agreed upon

5.3 The final payment shall be arranged within 3 bank working days once all details are known against presentation of the following documents by the Seller to the Buyer:

5.3.1 Final invoice in duplicate, based on the document 5.3.2 and 5.3.3 and based on the price as per the applicable quotational period for each payable element.

5.3.2 Weight and moisture certificate issued by an independent internationally recognized supervision company to be mutually agreed upon, confirm the outturn weight at the port of discharge

5.3.3 Assay certificate issued by an independent internationally recognized laboratory to be mutually agreed upon. Unless otherwise agreed, the final Assays shall be based on lot x lot basis for the payable elements and on composite basis for the penalty elements.

6. QUOTATIONAL PERIOD (Q/P) AND APPLICABLE MARKET

6.1. The quotational period shall be declared by the Buyer to the Seller in accordance to the options as stipulated in the contract confirmation

6.2. Unless otherwise explicitly agreed, the Zinc, Lead and payable Copper content shall be priced basis cash settlement price over the agreed Q/P at the London Metal Exchange (LME), the payable Silver content shall be priced basis the fix price over the agreed Q/P at the London Bullion Market (LMB), the payable Gold content shall be priced basis the AM/PM fix over the agreed Q/P at the London Bullion Market (LMB)

6.3. In the event that the Quotational Price ceases to be published at the specified time and/or day of the week and is published at a different time and/or on a different day of the week, then references to the "Quotational Price" shall be deemed to be references to the new publication time and/or day.

6.4. In the event that the Quotational Price ceases to be published for a period of at least three (3) consecutive months or there is a material change in the methodology behind the Quotational Price then the Parties shall either:

6.5.1 agree on a new Quotational Price that achieves pricing representative of the prevailing market for the Payable Metal;

or

6.5.2 agree on a pricing mechanism that achieves pricing representative of the prevailing market for the Payable Metal;

or

6.5.2 look at relevant prices in other similar markets in order to ascertain new reference points for pricing of the Payable Metal. Both parties shall exercise best endeavours to find a mutual agreement within 10 calendar days after declaration by either of the parties.

7 CHANGE IN PREVAILING CONDITIONS

7.1 It is understood by the parties that the contract has been agreed on the basis of the prevailing conditions at the date of the contract, including but not limited to economic, legal, regulatory, governmental and supply conditions and labour costs, transportation costs, taxes and duties. If any prevailing conditions should change at any time after the date of the contract, the Buyer reserves the right to negotiate suitable amendments to the terms of the contract, including but not limited to the price, to reflect such changes. If the parties fail within 120 days to agree such amendments to the contract to the satisfaction of the Buyer, the Buyer may declare the contract to be null and void.

8 LICENSES, DUTIES, TAXES AND LEVIES

8.1 The Seller shall be responsible for and shall indemnify the Buyer in respect of any existing or future duties, taxes, imports, fees and charges whatsoever arising in connection with the goods or their sale, delivery, import/export or use (including but not limited to all governmental charges imposed in the country of origin) up to and including delivery.

8.2 The Seller shall obtain and maintain any licenses or permits necessary for the export of the goods. The failure of the Seller to obtain and/or to maintain such license(s) or permit(s) shall not amount to frustration and shall not be grounds for a claim of force majeure.

9 FORCE MAJEURE

9.1 As used herein, "force majeure" shall mean any cause beyond the reasonable control of either party which delays, hinders or prevents (whether partially or wholly) that party from complying with its obligations under the contract including, but not limited to, any act of God or the elements, war, hostilities, mobilisation, confiscation, terrorism, riots, acts of the public enemy, civil commotion, fires, strikes, labour disputes, accidents, or any act in consequence of compliance with any order of any government or governmental or executive authority.

9.2 Upon the occurrence of a force majeure event, the affected party shall immediately give notice to the other stating the nature of the force majeure event, its effect on that party's performance under the contract and the estimated date the cause or event is expected to be removed. Upon request by the Buyer, the Seller shall arrange and present to the Buyer, a confirmation of the Force Majeure content in form of an official statement describing and confirming the incident, issued by a local chamber of commerce or a similar local authority

9.3 Provided that notice has been given in accordance with clause 9.2:

9.3.1 the affected party may suspend the performance of its obligations whilst and to the extent that the affected party is or has been delayed or

hindered or prevented by the force majeure event from complying with its obligations under the contract; and

9.3.2 if the force majeure event results in a delay extending beyond 120 days from the notice, the Seller may terminate the contract upon written notice to the Buyer.

9.5 Notwithstanding clause 9.4, if the force majeure event cannot be permanently removed or if the force majeure event results in a delay extending beyond 90 days from the event, the Buyer may terminate the contract upon written notice to the Seller.

9.6 Upon termination in accordance with this clause 9, both parties shall be relieved of their further contractual obligations, save that any accrued rights and obligations shall survive the termination of the contract.

9.7 Neither party shall be responsible for any loss or damage caused by any failure or delay in the fulfilment of its obligations under the contract if such failure or delay arises out of or is caused by force majeure events as described in this clause 9.

10. TOTAL AND PARTIAL LOSS

10.1. In the event of partial loss to and/ or partial damage of the Material after risk of Material has passed over from Seller to Buyer (as set out in Clause 2. DELIVERY, RISK AND TITLE), final settlement shall be made as soon as all the necessary details are available based on the Bill of Lading wet weight, moisture as per the provisional weight and moisture certificate(s) presented to Buyer (as set out in Clause 5.1. DOCUMENTS FOR PAYMENT) and the final assays determined in accordance with Clause 3 INSPECTION AND ACCEPTANCE of this Contract on that part of the cargo which has been safely delivered and otherwise in accordance with the terms of this Contract.

10.2. In the event of total loss to and/ or total damage of the Material after risk of Material has passed over from Seller to Buyer (as set out in Clause 2. DELIVERY, RISK AND TITLE) final settlement will be made as soon as all the necessary details are available based on the Bill of Lading wet weight, moisture as per the provisional weight and moisture certificate(s) presented to Buyer (as set out in Clause 5.1. DOCUMENTS FOR PAYMENT), assays as per the provisional assay certificate presented to Buyer (as set out in Clause 5.1. DOCUMENTS FOR PAYMENT) and otherwise in accordance with the terms of this Contract

11 TERMINATION/SUSPENSION

11.1 The Buyer shall, at its complete and exclusive discretion, have the right, upon giving written notice to the Seller, immediately to terminate the contract and/or any other contract between the Buyer and the Seller and/or immediately to suspend taking of delivery in whole or in part under the contract and/or any other contract until further notice if:

11.1.1 the Seller should fail to pay any sums to the Buyer when due under the contract or any other contract;

11.1.2 the Seller should fail to make full delivery of goods to the Buyer, whether under the contract or any other contract;

11.1.3 the Seller should become insolvent or bankrupt, go into liquidation, make any arrangement or composition for the benefit of the Seller's creditors or cause or suffer any equivalent act or thing under any applicable law;

11.1.4 a receiver, sequestrator, trustee or other such official should be appointed in respect of the assets, business and/or undertaking (or any part thereof) of the Seller;

11.1.5 the Seller should suspend payment of its debts or cease or threaten to cease to carry on business; or

11.1.6 the Buyer believes that any of the above events may occur or the Buyer doubts the Seller's willingness or ability to perform its obligations under the contract or any other contract.

11.2 The Seller shall indemnify the Buyer in respect of any losses, damages, costs or expenses suffered or incurred by the Buyer as a result of any termination or suspension of the contract or of any delivery thereunder in accordance with clause 11.1

11.3 The termination and/or suspension of the contract shall not prejudice any of the Buyer's rights accruing at or before or in connection with the termination and/or suspension of the contract or any remedies or proceedings with respect to such right.

12 LIMITATION OF LIABILITY

12.1 All claims of the Buyer shall be deemed and treated as waived and absolutely barred unless the Seller receives written notification of the claim

within 45 calendar days after the date of the cargo arrival at the port of discharge, or the receiving smelter or the end of the applicable delivery period, whichever is the latest.

12.2 The Buyer shall not be liable in contract or in tort or otherwise for any consequential or indirect damage or loss arising out of the performance or non-performance of any term of the contract, whether or not such loss or damage is foreseeable.

12.3 Under no circumstances whatsoever shall the Buyer's liability exceed the difference between the market price and the contract price of the goods.

13 ASSIGNMENT

13.1 The Seller shall not assign its rights under the contract unless the Buyer consents in writing (such consent not to be unreasonably withheld). The Seller shall not be entitled to assign or delegate its obligations under the contract.

14 WAIVERS

14.1 No waiver by the Buyer of any right, power or remedy or of any provision of the contract shall be effective unless it is expressly made and reduced to writing.

15 SEVERABILITY

15.1 The invalidity, illegality or unenforceability of any one or more of the terms of the contract shall in no way affect or impair the validity, interpretation and enforceability of the other terms of the contract.

16 THIRD PARTY RIGHTS

16.1 The Contract (Rights of Third Parties) Act 1999 shall not apply to the contract.

17 GOVERNING LAW AND INCOTERMS

17.1 The contract shall be governed by English law. The relevant provisions of the edition of Incoterms current at the date of the contract are expressly incorporated into the contract, insofar as those provisions are not inconsistent with these general terms and conditions or any other terms of the contract.

17.2 The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to the contract.

18 ARBITRATION

18.1 Any dispute arising out of or in connection with the contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in London (England) in accordance with the Arbitration Act 1996 (or subsequent enactment) and under the Arbitration Rules of the London Court of International Arbitration ("LCIA") current at the date of the contract which are deemed to be incorporated by reference into the parties' arbitration agreement.

18.2 The arbitral tribunal shall comprise three arbitrators who shall be familiar with shipping and commodities trading matters. Each party shall nominate an arbitrator of its choice, qualified in accordance with this clause, and the two arbitrators so nominated shall be appointed by the LCIA. The two arbitrators so appointed shall, in turn, nominate the third arbitrator, who shall be a solicitor or barrister and who shall be appointed by the LCIA.

19 NOTICES

19.1 All notices and communications under the contract shall be given in writing during London business hours by confirmed fax or e-mail to the party's address and numbers specified in the contract confirmation. Notices so given shall be deemed delivered when dispatched.