

ELEMETAL GENERAL TERMS & CONDITIONS

The following General Terms & Conditions (“T&C”) apply to all dealings and transactions between the customer and its affiliates, successors, predecessors, subsidiaries, and related entities (collectively, “Customer”); and Elemetal Direct USA, LLC, its parent, subsidiaries, affiliates, and their respective successors, predecessors, and related entities (collectively, “Elemetal”). Customer and Elemetal agree to be bound by each and all of these T&C.

- 1. ARBITRATION. CUSTOMER AND ELEMETAL AGREE THAT ANY CONTROVERSY, CLAIM OR DISPUTE BETWEEN CUSTOMER AND ELEMETAL ARISING IN ANY WAY FROM ANY DEALING(S), COMMUNICATION(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. THE ARBITRATION WILL BE ADMINISTERED 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. 13), 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.**
2. Customer is solely responsible and liable for insuring and shipping its precious-metal and gem/stone-bearing materials (collectively, the “Material”) to and from Elemetal, unless otherwise specifically agreed in writing signed by Elemetal. Customers utilizing Elemetal’s “Express Shipping” or similar programs must carefully follow all instructions—including without limitation package-scanning requirements—or such packages will not be insured, and Customer will bear all risks of damage, theft, or loss.
3. Customer must 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, theft, or damage claimed if Customer fails to provide the required packing-list information.
4. Customer must 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”).
5. Customer must not ship or deliver to Elemetal any Material that is radioactive, contains asbestos or is hazardous to human health, including but not limited to beryllium, mercury, thallium, cadmium, iron, lead, selenium, tellurium, zinc, antimony, sulfur, nickel, acrylonitrile, arsenic, benzene, coke-oven emissions, ethylene oxide, isocyanides, silica, and vinyl chloride.
6. 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. Likewise, Elemetal may close Customer’s account at any time in its sole discretion.
7. Customer represents and warrants to Elemetal that: (a) Customer has good and marketable title to Material, and full authority to sell and transfer Material; (b) the 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; (c) none of the Material that 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; (d) 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; (e) Customer has applied for, received and operates under all applicable licenses (e.g., pawn, secondhand dealer, precious metal dealer) required by each city, county and state where it transacts business; (f) Customer states, under penalty of perjury, that Customer has previously complied with all applicable holding and reporting requirements, anti-money laundering requirements and U.S. Customs regulations relating to Material; (g) Customer has paid all applicable duties relating to the Material; (h) Customer has in place a written anti-money laundering program or is statutorily exempt from this requirement; (i) the Material that 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 (j) Customer is a commercial entity or proprietor with experience in the precious-metals industry.
8. These T&C and the relationship between Elemetal and Customer are governed by the laws of the State of Texas, excluding its conflicts-of-law provisions.
- 9. 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 FURTHER 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.**
10. Customer agrees that if Elemetal makes any typographical, mathematical or other transaction error, or if any Elemetal representative makes an unauthorized purchase offer (collectively, an “Error”), then Customer will immediately to take all steps requested by Elemetal to correct such Error. Customer further agrees to indemnify, defend, and hold Elemetal harmless from any damages, losses, costs, or liabilities arising out of or related to such Error.
11. Customer expressly agrees and acknowledges that it 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 against Elemetal for loss, damage, or other relief relating to such Dispute.
12. Due to continually changing market prices, Elemetal offers to purchase or sell Material remain open only for the duration of the telephone call or Elemetal’s Customer Portal (the “Portal”) listing in which they are conveyed and are thereafter withdrawn unless agreed in writing by Elemetal as “locked-in.” Spot prices are reasonably determined by Elemetal in its sole and absolute discretion and are valid only for the duration of the telephone call or Portal listing in which they are conveyed. Any prices posted on Elemetal websites are for informational purposes only and do not constitute offers to buy or sell.
13. Forward Transactions. Customer’s agreement to sell Material to, or buy precious metal from Elemetal at a predetermined or “locked-in” price (e.g., “spot price” or LBMA Gold Price) constitutes a binding agreement. If Customer fails to deliver such forward-sold Material to Elemetal within five business days, or to deliver precious-metal payment within five business days after the lock-in date and timely thereafter consummate the transaction at the predetermined price, then (a) Customer must pay to Elemetal the difference between the Material’s locked-in price and the subsequent market price—occurring within ten days after the lock-in date—as reasonably determined by Elemetal as an offsetting transaction; any market gains will belong to and inure to the benefit of Elemetal, and (b) Elemetal may cancel such transaction and sell the subject precious metal to other customers.
14. Pool Accounts. Elemetal may permit Customer to transfer possession of Material to Elemetal for subsequent sale at a price to be agreed by Elemetal and Customer. Customer agrees that Elemetal may at any time after receiving such Material, upon notice to Customer, require Customer to arrive at an agreed price for the Material and consummate the Material’s sale to Elemetal. If Customer fails to price and sell the Material to Elemetal within seven business days following such notice, then Elemetal may price the Material and consummate its sale to Elemetal at Elemetal’s sole discretion at any time during the subsequent seven business days based on the then-existing LBMA Gold, Silver, Platinum or Palladium Price, as applicable. Alternatively, Elemetal may elect, in its sole discretion, simply to return to Customer the same amount and type of Material that the Customer transferred to Elemetal. All pool-account purchases and returns are made on a first-in-first-out basis.
15. Customer grants to Elemetal a lien, security interest, and right of set-off upon and against any and all of Customer’s open accounts, pool accounts and Material (“Customer Assets”) in Elemetal’s possession, custody or control to secure payment and performance of any and all Customer indebtedness, liabilities and obligations to Elemetal of every kind and description (“Customer Obligations”). Elemetal may, in its sole discretion at any time, use Customer Assets to satisfy Customer Obligations, and Elemetal will incur no liability to Customer therefor.
16. Elemetal may charge Customer a flat rate for shipping Material to or from Customer. Customer acknowledges that Elemetal’s flat-rate shipping fee may exceed the actual fee charged by the shipping vendor.
17. Elemetal is not responsible for failures to fulfill any obligations due to causes beyond its control.
18. These T&Cs supersede all 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 T&C may only be modified or amended by written instrument duly executed by Elemetal and Customer, and cannot be modified or amended by the terms of purchase orders, packing lists, or other documents issued unilaterally by Customer. No provision of these T&C will 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.

19. If any part of these T&C is held invalid or unenforceable, that portion will be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions will remain in full force and effect.
20. Elemetal's failure to enforce any right or provision in these T&C will not constitute a waiver of such or any other provision.
21. Customer (a) authorizes Elemetal to make such credit, criminal and other background investigations of Customer as Elemetal deems appropriate, and (b) consents to telephone recording and artificial intelligence analysis/processing (including without limitation generating conversation summaries) of such recordings.
22. All Customer payments received by Elemetal 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.
23. If Customer dies or becomes incapacitated or incompetent during a pending transaction, Elemetal will have the sole discretion to (a) terminate the pending transaction and reclaim any Material or monies provided 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.
24. **DISCLAIMER OF WARRANTIES. CUSTOMER AGREES THAT NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WILL 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 WARRANTIES OF GOOD AND WORKMANLIKE PERFORMANCE; MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; SATISFACTORY QUALITY; WARRANTIES ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE; REPRESENTATIONS RELATING TO ELEMETAL'S EVALUATION OF MATERIAL'S PRECIOUS-METAL CONTENT, LIKELY RECOVERY OF PRECIOUS METAL, OR WEIGHT DETERMINATION; ELEMETAL'S GEM/STONE REMOVAL SERVICES; FORWARD CONTRACTS ENTERED INTO BY ELEMETAL; SERVICES PROVIDED BY ELEMETAL; OR ANY OTHER ASPECT OF CUSTOMER'S DEALINGS OR TRANSACTIONS WITH ELEMETAL.**
25. **LIABILITY LIMITATION. UNDER NO CIRCUMSTANCES WILL ELEMETAL, ITS MEMBERS, OFFICERS, OR EMPLOYEES BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREIN OR CUSTOMER'S USE OF ELEMETAL'S PORTAL SERVICES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, DAMAGE TO REPUTATION, AND LOST BUSINESS OPPORTUNITIES. IN ADDITION TO THE INDEMNITY OBLIGATIONS SET FORTH IN PAR. 9, CUSTOMER AGREES THAT ELEMETAL'S MAXIMUM, TOTAL LIABILITY TO CUSTOMER FOR ANY TRANSACTION, OR FOR LOSS OF OR DAMAGE TO MATERIAL, INCLUDING BUT NOT LIMITED TO ANY DAMAGE OCCURRING DURING HANDLING, PROCESSING, STONE REMOVAL OR SHIPPING, WILL BE LIMITED TO THE LESSER OF: (A) CUSTOMER'S DECLARED TOTAL VALUE OF MATERIAL FOR SHIPPING PURPOSES, (B) THE 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.**
26. CUSTOMER EXPRESSLY REPRESENTS, WARRANTS, DECLARES AND AGREES THAT (A) IT IS A COMMERCIAL ENTITY OR PERSON WITH EXPERIENCE IN THE PURCHASE AND SALE OF PRECIOUS METAL, (B) IT HAS MADE ITS OWN, INDEPENDENT EVALUATION OF THE PRECIOUS-METAL CONTENT, WEIGHT AND OTHER ASPECTS OF THE MATERIAL THAT IT SEEKS TO SELL TO ELEMETAL, AND (C) CUSTOMER HAS RELIED ON ITS OWN KNOWLEDGE OF THE MATERIAL IN MAKING ITS DECISION TO SELL SUCH MATERIAL TO ELEMETAL AT ELEMETAL'S OFFERED PURCHASE PRICE. CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR LOSS OR DAMAGES AGAINST ELEMETAL ARISING OUT OF ANY ELEMETAL EVALUATION OR PURPORTED REPRESENTATION RELATING TO THE MATERIAL'S PRECIOUS-METAL CONTENT OR WEIGHT.
27. Customer consents to the recording of all telephone conversations it has with Elemetal.
28. Elemetal's prices and purchase offers do not include taxes. Customer is solely responsible for all taxes, customs, charges, fines, assessments or other duties applicable to transactions with Elemetal.
29. To assist Elemetal in generating its purchase offers for Customer's Material, Elemetal may evaluate the Material and determine a spot price, each in its sole discretion. Customer agrees and consents to Elemetal melting or otherwise transforming the Material as part of Elemetal's evaluation. Elemetal may evaluate the Material via any means it wishes.
30. Elemetal may provide Customer a statement or invoice reflecting its purchase offer for Customer's Material. This statement may also reflect Elemetal's offered "spot" price and Material evaluation which Elemetal used in arriving at its offered purchase price for the Material. Spot prices are subject to change without notice unless locked-in by Customer and agreed by Elemetal in writing as described herein. Any precious-metal quantities or percentages listed on Elemetal statements or invoices reflect Elemetal's internal estimate of the recoverable precious metal in the Material and are not intended as a representation to Customer of the Material's actual content or amount of recoverable precious metal.
31. **ALL SALES FINAL.** Customer acknowledges that it is free to accept or reject Elemetal's purchase offer for Customer's Material. By accepting Elemetal's payment for Material, Customer acknowledges and agrees as a condition to the sale that: (a) the purchase offer is acceptable, fair and reasonable to Customer, irrespective of Elemetal's evaluation of the Material, the criteria 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 Elemetal's purchase offer, Customer is relying on its own experience in the precious metals industry and its independent assessment of market conditions and the Material's anticipated amount of recoverable precious-metal, and (d) the sale of Customer's Material to Elemetal is final, and Elemetal will have no further obligation or liability to Customer with respect to the Material. If Customer disputes the sale of its Material after lock-in or accepting payment from Elemetal, then Customer will reimburse Elemetal for any market loss incurred by Elemetal relating to the Material.
32. **EXCLUSIVE REMEDY.** If Customer rejects Elemetal's purchase offer for Material, Customer's exclusive remedy regarding the proposed transaction is the return of its Material, in accordance with par. 6.
33. Elemetal's obligations to Customer are limited to those metals for which Customer requests refining services and pays applicable costs. Elemetal has no obligation to Customer regarding any other metals or content in the Material and reserves the right to dispose of, maintain, sell or otherwise utilize purchased Material in Elemetal's sole discretion.
34. Customer acknowledges and agrees that there are inherent, unavoidable risks of damage and loss associated with removing gems and stones, and Elemetal reserves the right to remove gems/stones using the method that Elemetal selects in its sole discretion. Customer agrees that any damage to or loss of gems/stones is subject to the LIMITATION OF LIABILITY set forth in par. 25.
35. If Customer fails to arrange at Customer's expense for the return or disposal of Rejected Material, Defective Material or other Material in left in Elemetal'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 therefor.
36. Customer has five business days to accept or reject Elemetal purchase bids for gemstones. If rejected, Elemetal will ship the gemstones back to Customer, at Elemetal's cost. If accepted, Elemetal will remit payment to Customer. Elemetal may refuse to provide a bid to Customer.
37. Gemstones sold by Elemetal without documented certifications are graded based solely on Elemetal's grading standards.
38. Customer may return gemstones purchased from Elemetal within five business days after Customer's receipt thereof for a refund if Customer returns the purchased gemstones in the same condition, in their original packaging, and with certification paperwork, if any. If certification paperwork is not included with Customer's return shipment, then a \$250 return fee will be charged to Customer.
39. Gemstone Shipping. Elemetal generally ships gemstones sold to Customers within three business days after clearance of payment funds, using UPS, FedEx, U.S. Postal Service or other carrier's (chosen at Elemetal'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. Customers may personally deliver or ship gemstones 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's sole discretion), Customer must carefully follow Elemetal's 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, theft, or damage.
40. Bullion Trades. All transactions must be conducted live with an Elemetal representative or via Elemetal's Portal. Elemetal has no responsibility or liability for transaction requests placed by voicemail, email or other automated means. Elemetal may refuse Customer orders for any or no reason.
41. **PORTAL SERVICES. ELEMETAL DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT CUSTOMER'S USE OF ELEMETAL'S PORTAL SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND CUSTOMER AGREES THAT FROM TIME TO TIME ELEMETAL MAY REMOVE THE PORTAL SERVICES FOR INDEFINITE PERIODS OF TIME, CANCEL THE SERVICES AT ANY TIME, OR OTHERWISE LIMIT OR DISABLE CUSTOMER'S ACCESS TO THE SERVICES WITHOUT NOTICE. CUSTOMER EXPRESSLY AGREES THAT ITS USE OF, OR INABILITY TO USE, OR ACTIVITY IN CONNECTION WITH THE PORTAL SERVICES IS AT CUSTOMER'S SOLE RISK. THE SERVICES PROVIDED TO CUSTOMER THROUGH THE PORTAL ARE (EXCEPT AS EXPRESSLY STATED BY ELEMETAL) PROVIDED "AS IS" AND "AS AVAILABLE" FOR CUSTOMER'S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO CUSTOMER. CUSTOMER AGREES THAT UNLESS REQUIRED BY APPLICABLE LAW, ELEMETAL HAS NO RESPONSIBILITY TO CONTINUE MAKING SERVICES AVAILABLE THROUGH ITS PORTAL, AND ELEMETAL WILL NOT BE LIABLE TO CUSTOMER IF SERVICES BECOME UNAVAILABLE.**
ELEMETAL WILL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY CUSTOMER IN CONNECTION WITH THE PORTAL SERVICES, BUT CUSTOMER AGREES THAT ITS SUBMISSION OF SUCH INFORMATION IS AT CUSTOMER'S SOLE RISK, AND YOU HEREBY RELEASE ELEMETAL FROM ANY AND ALL LIABILITY TO CUSTOMER FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY. ELEMETAL DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICES WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND YOU HEREBY RELEASE APPLE FROM ANY LIABILITY RELATING THERETO. YOU SHALL BE RESPONSIBLE FOR BACKING UP YOUR OWN SYSTEM, INCLUDING ANY CONTENT PURCHASED OR ACQUIRED THROUGH THE SERVICES. Elemetal may, in its sole discretion, suspend, disable, or terminate Customer's Portal account and access at any time without notice.
42. Customer assumes all risk of loss arising from any unauthorized, fraudulent, or erroneous payment instruction transmitted using Customer's email account or other communication systems, including as a result of hacking, business email compromise, or similar cyber intrusion, except to the extent such loss is caused by Elemetal's gross negligence or willful misconduct. Elemetal's payment in accordance with payment instructions that Elemetal reasonably believed to be authorized by Customer will fully satisfy Elemetal's payment obligation under this Agreement, notwithstanding any subsequent claim that such instructions were unauthorized or fraudulent.