

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

### BACKGROUND

(A) Sims Recycling Solutions is the leading global recycler of waste electronics and electrical equipment.

(B) The Seller wishes to sell to Sims, materials fit for precious metal recovery. Sims wishes to purchase such goods from the Seller on the terms and conditions of this Agreement.

### 1. INTERPRETATION

In these standard terms and conditions:

1.1 the following words and expressions will have the following meanings unless the context otherwise requires:

**“Business Day”** means a day that is not a Saturday, Sunday or public or bank holiday in the State of Illinois;

**“Company” or “Sims”** means Sims Recycling Solutions, Inc. and any of its trading names with which the Seller Contracts;

**“Contract”** means the contract between the Seller and the Company for the sale and purchase of the Goods formed in accordance with condition 2;

**“Duly Authorized Representative”** means the representatives of the Company as outlined in the Purchase Contract who is authorized to enter into a binding Contract for the purchase of Goods from the Seller and/or any statutory officer of the company;

**“Goods”** means any goods which the Seller agrees to supply to the Company (including any of them or any part of them);

**“Insolvent”** means in respect of either Party:

a) a party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved or that party being otherwise dissolved; or

b) the appointment of an administrator of, or the making of an administration order in relation to, either party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity’s undertaking, assets, rights or revenue; or

c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making any application to a court of competent jurisdiction for protection from its creditors; or

d) that party being unable to pay its debts, or being capable of being deemed unable to pay its debts; or

e) that party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

**“Intellectual Property Rights”** means all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United States of America and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

**“Know How”** means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;

**“Outturns”** Means the price payment by the Smelter, based upon either a sampling or full processing of the Goods, which are provided to it by the Company and on which the final Price payable/reclaimable to/from the Seller is established;

**“Price(s)”** means the price(s) as calculated by the Company, at its sole discretion;

**“Purchase Contract”** means any purchase contract of the Company for the Goods incorporating these Terms and Conditions;

**“Seller”** means the person from whom the Company purchases the Goods as outlined in the Purchase Contract;

**“Smelter”** means a third party which smelts the Goods for the Company;

**“Smelting”** means the process whereby Goods are reduced to their components part to extract valued commodities for the purposes of Price evaluation;

**“Specification”** means in relation to the Goods, the technical specifications, industry classification or grade, including weight and volume of those Goods; all information of any description which explains the quality, type and/or functionality of the Goods;

**“Terms and Conditions”** means these standard terms and conditions of purchase together with any operational terms agreed in writing between the Seller and the Company in the Purchase Contract.

1.2 all headings are for ease of reference only and will not affect the construction or interpretation of the Terms and Conditions;

1.3 unless the context otherwise requires:

1.3.1 references to the singular include the plural and vice versa; and

1.3.2 references to any gender include every gender

1.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;

1.5 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and

1.6 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party .

## **2. FORMATION AND INCORPORATION**

2.1 Subject to any variation under Condition 2.5, the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of order, quotation, Specification, delivery note, invoice or similar document, whether or not such document is referred to in the Contract.

2.2 Where applicable, each quotation for the Goods from the Seller will be deemed to be an offer by the Seller to sell the Goods upon the Terms and Conditions. All quotations provided by the Seller, will remain open for 30 days from its date of issuance. The Contract is only formed when a written acceptance from a Duly Authorized Representative of the Company is given by the Company to the Seller or The Company Accepts the Goods at its facility in accordance with **clause 8** below.

2.3 All purchase Contract (including any orders) by the Company to the Seller will be upon these Terms and Conditions to the exclusion of all others.

2.4 Delivery of the Goods to the Company will be deemed conclusive evidence of the Seller’s acceptance of the Terms and Conditions.

2.5 The Seller may not cancel the Contract. The Company is entitled to cancel the Contract in whole or in part by sending written notice as per clause 13 to the Seller at any time prior to delivery of the Goods in which event the Company’s sole liability will be to pay to the Seller the Price(s) for Goods actually received by the Company.

2.6 Save as otherwise expressly provided in the Contract, no variation to the Terms and Conditions will be effective unless it is in writing and signed by a Duly Authorized Representative on behalf of the Company.

2.7 No contract will be deemed valid if the conditions of this clause 2 are not met.

## **3. THE GOODS**

3.1 The quantity and description of the Goods will be as set out in the Seller’s quotation or the Company’s Purchase Contract and/or in any applicable Specification supplied or advised by the Company to the Seller with or before the Purchase Contract.

3.2 The Seller will comply with all applicable standards, regulations and other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

3.3 If the Company agrees to purchase from the Seller Goods by way of sale by sample then the Seller confirms that that the Goods supplied will correspond to the quality of the sample provided before entering into this Contract.

3.4 The Company will have the right to inspect and test the Goods at any time prior to delivery. The Seller will not unreasonably refuse any request by the Company to carry out such inspection and testing and will provide the Company with all access and support reasonably required to do so.

3.5 If as the result of such inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract and the Company so informs the Seller within 10 Business Days of inspection or testing, the Seller will take all steps necessary to ensure compliance. Without prejudice to any other rights of the Company under the Contract, any failure of this obligation by the Seller will be deemed to be a material breach entitling the Company to terminate the Contract pursuant to the terms of these Terms and Conditions.

3.6 Notwithstanding any such inspection or testing, the Seller will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Seller's obligations under the Contract.

3.7 The Seller acknowledges that conformity with the Contract is of the essence and the Company will, at its option, be entitled to reject the Goods or terminate the Contract under the terms of these Terms and Conditions if the Goods are not in conformance with the Contract.

3.8 If the Company rejects the Goods, the Company shall notify the Seller. Unless the parties otherwise agree, upon notification, the Seller is obligated to promptly arrange for collection of any rejected Goods, at its own cost, at an agreed upon date and time. The Seller acknowledges that it is subject to storage fees and costs for any Goods not collected from the Company within a reasonable time after rejection.

#### **4. PRICE**

4.1 Subject to **Condition 4.3**, the only monies to be paid by the Company in connection with the purchase of the Goods are the Prices which will be inclusive of all costs and expenses unless agreed to the contrary by the Parties.

4.2 **THE SELLER ACCEPTS THAT IT IS SUPPLYING GOODS FIT FOR PRECIOUS METAL RECYCLING TO THE COMPANY WHICH ARE SUBJECT TO THE COMPANY'S PRICE CALCULATION. THE COMPANY WILL PROCESS SUCH GOODS IN ANY FASHION IT DEEMS REASONABLE AND WHICH IS LEGAL. THE COMPANY WILL AT THE END OF THE PROCESS ADVISE THE SELLER OF THE PRICE PAYABLE. THE SELLER ACCEPTS AND AGREES THAT THE COMPANY WILL IN ITS SOLE DISCRETION DETERMINE THE PRICE PAYABLE FOR THE GOODS DELIVERED AND AGREES THAT ANY PRICE PUT FORWARD BY THE COMPANY WILL BE ACCEPTED BY SELLER.**

If the Seller wishes to have an independent representative present when the Company is processing the Goods, the Seller must notify the Company prior to receipt of the Goods. Unless Seller's representative is present, the Company's weight/unit count assessment and pricing calculation shall be final.

4.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid value added tax invoice.

#### **5. PAYMENT**

5.1 Subject to the Seller performing its obligations in accordance with the terms of the Contract, the Company will pay the Prices to the Seller in accordance with this clause 5.

5.2 The Company will provide a financial settlement to the Seller at the end processing of the Goods.

5.3 The Seller may then invoice against the financial settlement as detailed in clause 5.2 above or The Company may remit such funds to the Seller within forty-five days of the settlement provided. Where applicable, each invoice will be a valid value added tax invoice and will contain the following information: date of invoice, invoice number, period to which the invoice relates, goods to which the invoice relates and vat. The invoice will be sent to the Company at the address as may be notified by the Company to the Seller from time to time.

5.4 Each undisputed invoice will be payable by the Company 45 days from the end of the month in which the invoice is received by the Company.

5.5 The Company will be entitled to set-off any liability which the Seller has to it against any liability which it has to the Seller, whether such liability is present or future, liquidated or unliquidated, under the Contract or any other contract between the parties or other cause of action and irrespective of the currency of its denomination.

**5.6 THE SELLER ACCEPTS THAT ANY PRE-PAYMENTS MADE BY THE COMPANY FOR THE GOODS, ARE ESTIMATES ONLY, AND DO NOT CONSTITUTE THE FINAL VALUATION OF THE GOODS. NO PRE-PAYMENT MADE BY THE COMPANY WILL CONSTITUTE ACCEPTANCE BY THE COMPANY OF THE GOODS OR OTHERWISE PREJUDICE ANY RIGHTS OR REMEDIES WHICH THE COMPANY MAY HAVE AGAINST THE SELLER INCLUDING THE RIGHT TO RECOVER ANY AMOUNT OVERPAID OR WRONGFULLY PAID TO THE SELLER.**

**THE SELLER ACKNOWLEDGES AND ACCEPTS THAT WHERE PAYMENTS HAVE BEEN MADE TO IT BY THE COMPANY PRIOR TO THE GOODS BEING SENT TO THE SMELTER, SUCH PAYMENTS MAY HAVE BEEN OF A HIGHER AMOUNT THAN THE ACTUAL VALUE OF THE GOODS SUPPLIED TO THE COMPANY BY THE SELLER. THE SELLER AGREES THAT IF THE PRICE PAID BY THE SMELTER IS LESS THAN THE AMOUNT PAID TO THE SELLER BY THE COMPANY, THEN, FOLLOWING CONFIRMATION BY THE COMPANY OF THE ACTUAL VALUE, LESS ANY FEES AND HANDLING COSTS OF THE COMPANY, AS ESTABLISHED BY THE OUTTURNS, THE SELLER WILL REPAY TO THE COMPANY, SUCH AMOUNT AS THE COMPANY ADVISES THE SELLER OF. ALL SUCH AMOUNTS WILL BE DUE BY THE SELLER ON DEMAND. IF REPAYMENT IS NOT MADE WITHIN 2 DAYS, AN ANNUAL INTEREST AT THE HIGHEST STATUTORY RATE WILL BE LEVIED AGAINST ALL SUCH OUTSTANDING AMOUNTS.**

**THE SELLER ALSO ACCEPTS THAT IT WILL COMPLETE ON DEMAND ALL SUCH ADDITIONAL DOCUMENTS, AS MAY BE REQUIRED BY THE COMPANY, TO GUARANTEE AND/OR PERFECT ITS CLAIM ON ANY REPAYMENT OF PREPAID AMOUNTS.**

## **6. INSTALLMENTS**

6.1 The Seller may not deliver the Goods by separate instalments in stages or invoice the Price for an instalment separately unless agreed by the Company in writing. If the Company does agree, the

Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Company will have the right, but not the obligation, to:

6.1.1 treat all the Contracts for the total Purchase Contract as repudiated if the Seller fails to deliver or perform any instalment or stage; and

6.1.2 reject any or all of the instalments for the total Purchase Contract if the Company is entitled to reject any one instalment.

## **7. DELIVERY OF GOODS**

7.1 If the Goods are to be delivered by the Supplier to the Company's place of business or the address stated on the Purchase Contract, the Seller will off-load the Goods at its own risk as directed by the Company.

7.2 The Goods will be delivered on the date or within the period specified in the Purchase Contract, or if no such period is specified then within 30 days of the date of the Contract.

7.3 The Seller will ensure that:

7.3.1 the Goods are marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier and/or properly packed and stored so as to reach their destination in an acceptable condition;

7.3.2 each delivery will be accompanied by a delivery note which will show, inter alia, an order number, date of order, number or volume of the material supplied and, in the case of part delivery, the outstanding balance remaining to be delivered; and

7.3.3 before delivery or performance the Company is provided in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise.

7.4 The Company reserves the right to mark, separate or quarantine the Goods immediately on delivery. This is undertaken for the purposes of security and the Company will not be deemed to have accepted the Goods by reason of this nor will the Seller be entitled to raise an objection on this ground to any subsequent rejection of the Goods.

7.5 No Goods supplied under the Contract earlier than the agreed date for delivery will be accepted or paid for unless the Company notifies the Seller of its intention to accept and pay for the same.

7.6 Without prejudice to the Company's other rights under the Contract, if the Goods are delivered to the Company in excess of the quantities ordered, the Company will be entitled to either retain and pay for the excess in line with the Price(s) (provided that the excess delivered is of the same or similar quality as the Goods) or reject the excess goods and return them to the Seller at the Seller's expense.

7.7 The Company will not be deemed to have accepted the Goods until it has had fourteen (14) days to inspect them following delivery ("**Acceptance**"). The Company will also have the right to reject the Goods within fourteen (14) days from the date of inspection if the Goods do not comply with the relevant Contract or contain unprocessable Goods or are, in the Company's or its Affiliates' reasonable opinion, not packaged safely.

7.8 If the Goods are not delivered on the date set out in the Purchase Contract or as agreed by the Parties, then, at its option, the Company may terminate the Contract and claim damages for any losses incurred as a result of a breach of this clause 7.8.

## **8. RISK / OWNERSHIP**

Risk and Title in the Goods will pass to the Company on Acceptance by it as per clause 7 above. The Seller warrants that it has good and complete title to the Goods and that no third party has any interest in the Goods. The Seller further warrants that title is free and clear of all liens, defects, encumbrances, covenants, conditions, restrictions, rights of redemptions and easements. The Seller will indemnify, and keep indemnified, the Company and its Affiliates from and against all costs, expenses, liabilities, losses, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company or its Affiliates incur or suffer due to any breach of this clause.

## **9. INTELLECTUAL PROPERTY**

9.1 If required for the effective performance of the Contract, the Parties authorizes the other to use the Intellectual Property Rights of the other Party for the purposes of exercising its rights and performing its obligations under the Contract. The Parties will have no other rights whatsoever in respect of the Intellectual Property Rights of the other.

9.2 The Seller warrants that neither the Goods, nor their use, resale or importation, infringes the Intellectual Property Rights of any person except to the extent that any infringements arise from any Specifications, drawings, samples or descriptions provided by the Company.

## **10. WARRANTY INDEMNITY AND CANCELLATION**

10.1 The Seller warrants, represents and undertakes to the Company that the Goods:

10.1.1 will be of satisfactory quality, and fit for any purpose held out by the Seller or made known to the Seller either in writing or orally at or prior to the Contract being formed;

10.1.2 the bulk of the Goods will be accordance to the description or sample if the sale is by sample;

10.1.3 will correspond in every respect with any Specifications, samples or descriptions provided to the Company; and

10.1.4 will comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods and their sale, supply and transportation.

10.2 Without prejudice to any other rights or remedies of the Company (whether express or implied), if the Seller breaches any terms of the Contract (including a failure or delay in delivery) or the Company terminates the Contract pursuant to the terms of this Contract then the Company may (but will not be obliged) to, whether or not the Goods have been accepted:

10.2.1 cancel any or all remaining instalments or stages if the Contract has not already been terminated;

10.2.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; and

10.2.3 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's breach of the Contract or failure to deliver the Goods on the due date or at all.

10.3 The Seller will indemnify, keep indemnified and hold harmless the Company in full and on demand from and against all liabilities which the Company incurs or suffers directly or indirectly in any way whatsoever as a result of a breach of, or a failure to perform or defect or delay in performance or negligent performance of, any of the Seller's obligations under the Contract.

## **11. TERMINATION**

11.1 If the Seller:

11.1.1 commits a material breach of the Contract which cannot be remedied; or

11.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within thirty (30) days of a written notice setting out the breach and requiring it to be remedied being given by the Company,

the Company may terminate the Contract immediately by giving written notice to that effect to the Seller.

11.2 The Company may terminate the Contract immediately by giving written notice to that effect to the Seller if the Seller becomes Insolvent.

11.3 Following expiry or termination of the Contract:

11.3.1 Condition 9.2, 10.3, 11.3, 12, 13 and 14 will continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract; and

11.3.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

## **12. GENERAL**

12.1 Time will be of the essence in respect of all dates, periods and timescales with which the Seller is required to comply under the Contract and any dates, periods and timescales which may be substituted for them by the agreement in writing of the parties.

12.2 The Company's rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.

12.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

12.4 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if

it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

12.5 This documents outlines the entire agreement between the parties, all agreements and their terms which have been executed prior to this are void and the relationship of the Parties is governed solely under the terms of this agreement.

12.6 The Seller will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract without the Company's prior written consent. Such consent to be unreasonably withheld.

12.7 The Company will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations under the Contract.

12.8 Nothing in this Condition 12 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

12.9 The Company shall not be liable for any delays in performance caused by acts of God, fire or other casualties, accident, strike, shortage of labor or materials, governmental action or other causes beyond the Company's reasonable control. The time for the Company's performance shall be extended by the period of any such delay.

### **13. NOTICE**

13.1 Subject to **Condition 13.4**, any notice or other communication given under or in connection with the Contract will be in writing, and sent recorded delivery/airmail post to that party's address.

13.2 Any notice or communication given in accordance with Condition 13.1 will be deemed to have been served if signed for at delivery.

13.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Condition 13.1 were complied with.

13.4 This Condition **13** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

### **14. LIMITATION OF LIABILITY**

**14.1 COMPANY, INCLUDING ITS AFFILIATES' MAXIMUM AGGREGATE LIABILITY UNDER ANY CONTRACT WHATSOEVER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, RESTITUTION UNDER ANY INDEMNITY OR OTHERWISE) FOR ANY DAMAGE OR LOSS HOWSOEVER CAUSED WILL BE LIMITED TO TEN THOUSAND UNITED STATES DOLLARS (\$10,000.00). NOTWITHSTANDING THE FOREGOING, NEITHER PARTY OR THEIR RESPECTIVE AFFILIATES EXCLUDE THEIR LIABILITY (IF ANY) TO THE OTHER PARTY OR THEIR RESPECTIVE AFFILIATES FOR ANY MATTER WHICH IT WOULD BE ILLEGAL FOR A PARTY TO EXCLUDE OR TO ATTEMPT TO EXCLUDE ITS LIABILITY FOR.**

**14.2 COMPANY WILL NOT BE LIABLE UNDER ANY CONTRACT WHATSOEVER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, RESTITUTION UNDER ANY**

**INDEMNITY OR OTHERWISE) FOR ANY LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA OR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

#### **15. GOVERNING LAW AND JURISDICTION**

15.1 This Agreement and any Contract hereunder shall be governed by and construed in accordance with the laws of the State of Illinois (without reference to the conflicts of laws principles thereof). The parties irrevocably agree to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) in any state or federal court of general jurisdiction sitting in Cook County, Illinois, and they irrevocably submit to the jurisdiction of such court and waive any objection they may have to either the jurisdiction or venue of such court.