

CONDITIONS OF BUSINESS FOR METAL ANALYSIS, CERTIFICATION, NICKEL TESTING AND OTHER ANALYTICAL SERVICES

- 1) These conditions apply in respect of all contracts that require metal analysis, certification, nickel testing any other test or analytical service (hereinafter collectively known as "analytical service") of any materials.
- 2) These conditions apply to all materials which may be in the form of bullion or any other samples (hereinafter collectively known as "material") received by or on behalf of The Guardians of the Standard of Wrought Plate in Birmingham, trading as The Birmingham Assay Office (hereinafter known as "The Company") from any person or his successors ("the Consignor") by or on whose behalf materials are delivered sent or consigned to the Assay Office for the purpose aforesaid, save for those contracts to which separate hallmarking conditions apply.
 - 3) (a) All material submitted must be accompanied by a properly completed Test Application Form, copies of which are available upon request from The Company.

The Company reserves the right, at its discretion to decline to accept any material.
 - (b) All material submitted to The Company shall at all times remain at the risk of the Consignor.
- 4) The Consignor shall be responsible for selecting and delivering appropriate material for the analytical service required. The results of the analytical service relate only to that particular sample and The Company makes no representation or warranty in relation to the material from which the sample is taken.
- 5) In some instances material may be subjected to destructive test methods and The Company accepts no liability for samples which are not returned in a saleable condition.
- 6) The Company shall in no circumstances be under any liability to the Consignor in respect of any loss or damage to any material which is in the course of carriage to or from the Company unless such loss or damage is shown to have been directly caused by theft or other dishonesty on the part of the employees (but not independent contractors) of The Company.
- 7) The Consignor should ensure that all material is insured in the full replacement value thereof under a policy of insurance against loss or damage by accident fire and theft and against any risk not accepted by The Company hereunder, in particular the Consignor should ensure that such policy extends to material while in the custody of The Company its employees and independent contractors and any consequential or other loss or damage to or inaccurate testing thereof.
- 8) All material and appropriate Certificates shall be collected from The Company by the Consignor or by his duly authorised agent or if requested on the Test Application Form they may be sent to the Consignor or as directed by him at the Consignor's expense.
- 9) The Company will endeavour to maintain a rapid service for any analytical service but will not be liable for delay howsoever caused.
- 10) The Company may, at any time, subcontract all or any of its rights or obligations under this agreement without the consent of and without giving notice to the Customer.
- 11) Without prejudice to clause 10, the Company may, at any time, assign, transfer, charge, mortgage, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement by written notice to the Customer.
- 12) The fees of The Company shall be those on our price list or those agreed between The Company and the consignor and in force when the material is received at The Company.
- 13) If the consignor should wish to change the information entered on the Test Application Form once material has been submitted to The Company. The Company will endeavour to carry out the revised analytical service, however The Company will have the right to charge fees for any work carried out.
- 14) Invoices will be submitted to the consignor by the company on completion of the analytical service or, when agreed between the consignor and The Company. Invoices will be submitted prior to completion of said analytical service.
- 15) All material submitted for bullion certification whether in the form of bar, ingot, powder, flake, scrap metal, finished articles or otherwise will be melted by The Company and formed into a bullion bar ("the Bullion Bar") on which an identification mark ("the Identification Mark") will be struck.
- 16) The Bullion Bar will be drilled and/or otherwise sampled at The Company's discretion and an assay will be made of the metal specified by the Consignor in the Test Application Form or any change to the metal specified by the consignor. The Company will retain laboratory residues but will return any sample with the Report as hereinafter described.
- 17) The Company will issue a Bullion Certificate in respect of the Bullion Bar showing its Identification Mark, weight and assay results.
- 18) The Bullion Certificate will be signed by an authorised signatory of the Company. Any unauthorised addition to a Bullion Bar or interference with The Company Identification Marks or alteration to a Certificate shall invalidate said Certificate.
- 19) Subject as aforesaid The Company accepts liability to the Consignor in respect of loss or damage to any material while the material is in the actual custody of The Company where such loss or damage is directly caused by the wilful default or negligence of The Company or of its employees (but not independent contractors) while acting in the course of their employment by The Company.
 - (a) Notwithstanding anything herein contained any liability of The Company shall be limited to the unwrought value by weight of the material comprised in the bullion bar or sample
 - (b) The Company shall in no circumstances be liable for any consequential or other loss or damage resulting from loss or damage to or inaccurate testing of any material.
- 20) The Company shall incur no liability as respects any loss or damage caused in the reasonable exercise or (as the case may be) discharge of any of the powers and the duties conferred upon The Company by the Hallmarking Act 1973 or by any other statute for the time being in force.
- 21) If any dispute shall arise concerning the results in any analytical service, The Company must be notified immediately and it will endeavour to reconcile any difference with any person or persons claiming loss as a result thereof ("the Complainant"). If reconciliation of the difference proves unsuccessful the dispute shall be referred at the request in writing of either the Company or the Complainant to an arbitrator. Such arbitrator shall be selected by the Complainant from a list of not less than three qualified reputable and independent persons nominated by the Company and situated in the U.K. and the decision of the arbitrator shall be final and binding on all parties.
- 22) Save where the Consignor does not make or hold himself out as making his contract with the Company in the course of a business (as defined by the Unfair Contract Terms Act 1977) the Consignor shall indemnify The Company against all and any liability cost or expense in excess of the liability of the Assay Office to the Consignor hereunder which shall or may be incurred by The Company by reason of any claim action or legal proceedings brought against The Assay Office or its employees by the Owner of the material or by any person having a legal or other interest in the material whether such claim or legal proceeding arises from or as a result of the negligence of The Company or its employees or otherwise.
- 23) Every right exemption defence and immunity of whatsoever nature applicable to The Company or to which the Company is entitled hereunder shall also be available to and shall extend to protect every employee of The Company in the course of or in connection with his employment and for the purposes hereof The Company is or shall be deemed to be acting as agent on behalf of and for the benefit of all persons who are or shall be its employees from time to time and all such persons shall to this extent be or be deemed to be parties to the contract contained in these Conditions or of which these Conditions form part.
- 24) The contract is personal to the Consignor, who shall not assign or in any way part with the benefit thereof without the prior consent of The Company.
- 25) The conditions and the contract shall not create or evidence or be deemed to create or evidence, any agency or partnership between The Company on the one hand and the Consignor or any third party on the other.
- 26) Nothing herein contained shall affect any right of compensation specifically conferred by any statute for the time being in force.
- 27) All contracts made upon these Conditions and the interpretation thereof shall be governed by and construed in accordance with English Law. The venue for proceedings shall be in England.