

Glencore Canada Corporation
General Smelting of Canada, a Glencore Company
GENERAL TERMS AND CONDITIONS
CA-Z-1105 Rev4

1. **PAYMENT** Any payment made under this Agreement shall be in United States funds unless otherwise agreed. Interest may be charged on overdue accounts at the rate of 1.5% per month (19.56% per year) or the maximum rate permissible by law, whichever is less, from the date a payment was due through the date such payment is made. Any payment due by Seller to Buyer under this Agreement may, at the option of Seller, be applied by Seller as a set-off or deduction against any payment due by Buyer to Seller under this Agreement or any other Agreement between Buyer and Glencore. NSF payments will be subject to a C\$25.00 penalty.

2. **TAXES** All taxes (except Seller's income taxes), duties, fees and other impositions ("taxes") that may be levied, charged, assessed or imposed by or payable to any federal, state, provincial, local, municipal or other governmental authority upon this Agreement or any amount payable hereunder, or upon the Product or Service or the sale, use, or delivery of the Product or Service are assumed by and shall be for the account of Buyer, and Buyer shall pay directly all such taxes or reimburse Seller therefor.

3. **CREDIT** Seller's duty to perform, and Buyer's right to purchase as well as the credit terms provided herein are at all times subject to the continuing approval of Buyer's creditworthiness by Seller. Without limiting Seller's rights and remedies, if Buyer fails to pay an amount promptly when due hereunder or to satisfy Seller as to Buyer's creditworthiness when required by Seller, Seller may cancel this Agreement, impose different credit or payment terms, suspend, stop in transit, recall or reclaim deliveries or shipments, or impose different requirements for collateral assurance of payment.

4. **DELIVERY** Shipping and Service schedule is Seller's best estimate and will not operate to bind Seller to ship, make deliveries and provide services on the date specified by Buyer or quoted by Seller. Delivery may be made and invoiced in one or more shipments or installments, each shipment or progressive installment being deemed a separate sale. Seller's weights and assays shall govern on product. In cases where the Seller is responsible for shipping goods, waiting time exceeding the maximum period allowed by the selected transport Company will be invoiced to the Buyer at a cost of C\$100.00/hour. If Buyer requires a delivery appointment, the Seller will invoice the Buyer at a cost of C\$25.00 per appointment.

5. **TITLE AND RISK** The Seller shall retain title to and ownership of the Material of [each] delivery until the [provisional/final] payment for such delivery has been received in full by Seller in accordance with the terms and conditions of this Contract. Risk of loss or damage to the Product shipped hereunder shall pass to Buyer at the agreed upon delivery point (Incoterms). Once risk of loss in the Product has passed to the Buyer, the Seller is no longer responsible for any losses or damages of any kind arising in connection with the Product or otherwise.

6. **LIMITED WARRANTY** Unless specifically provided otherwise in writing herein, Seller does not make any representation, warranty or covenant of any kind, express or implied, written or oral, statutory or otherwise, relating to the Products and Services, whether used alone or in combination with other substances. Specifically excluded, without limiting the generality of the foregoing, are the implied warranty of fitness for a particular purpose and the implied warranty of merchantability.

7.(a) **CLAIMS** Buyer shall not make any claim against Seller with respect to weight, quality, loss of or damage to the Product and Service unless notice of such claim is delivered to Seller in writing within ten (10) days of the receipt by Buyer of the Product or Service in respect of which such claim is made. Buyer's exclusive remedy with respect to any such claim shall be rejection of the Product and, at Seller's election after inspection by Seller, replacement of the rejected Product or credit for the invoice price of the Product hereunder. Buyer cannot return merchandise to Seller without Seller's authorization. Merchandise returns may be subject to shipping and handling fees representing 15% of the sale price. Seller's liability on Service shall not exceed the service fee the Seller will receive hereunder for the portion of the service giving rise to a claim.

In addition, and without limiting the generality of the foregoing, Buyer shall not claim against Seller for consequential, punitive, exemplary or indirect damages or loss (nor any lost profits, savings or business opportunity), whether in tort, contract or otherwise, in respect of any claim resulting from this Agreement or non-delivery of the Product or Service.

7.(b) **LIABILITY** Seller shall not be liable to Buyer for personal injury, death, property, environmental or other damage claimed to have arisen out of or resulting from the handling, possession, processing, resale, use or disposal of the Product or Service, whether alone or in combination with other substances, by Buyer or the agents, employees, or customers of Buyer and Buyer shall indemnify and save Seller harmless from and against any claims losses, damages, costs, expenses or liability of whatsoever nature from third parties arising out of or in connection with such personal injury, death, property, environmental or other damage.

8. **FUTURES TRANSACTIONS** In the event that the Seller, in order to hedge its price risk, has contracted with a London Metals Exchange ("LME") broker to take on an LME position equal in tonnage and/or time of delivery to the sale of Product to the Buyer and the Buyer either fails to take delivery of the Product at the time specified (in whole or in part) such that the Seller has to adjust its LME contract to an earlier or later delivery date or the Buyer cancels its order (in whole or in part) such that the Seller has to settle its LME contract in the absence of the physical sale to the Buyer offsetting the settlement of the Seller's LME contract the Seller may, without prejudice to its other rights, charge the Buyer with the costs the Seller incurs in adjusting or settling its LME contract(s).

9. **DEFAULT** Either party shall be entitled, in addition to any other rights under this Agreement or legal remedy, to terminate or suspend this Agreement by giving notice in writing to the other party if at any time such other party:

(a) becomes or is adjudicated bankrupt or commits any act of bankruptcy, makes a general assignment for the benefit of creditors, is ordered wound up by a court of competent jurisdiction, permits or suffers a receiver to be appointed for all or any part of its property, takes advantage of any law for the benefit of insolvent persons, permits or suffers any writ of attachment, garnishment or execution to be filed or levied against it, ceases to carry on business or otherwise acknowledges its insolvency; or

(b) is in breach of its obligations in accordance with the terms of the Agreement to, in the case of Buyer, make payment for the Product or Service or, in the case of Seller, to deliver the Product or Service, and such breach has continued unremedied for a period of twenty (20) days following the giving of notice of such breach.

Upon such termination or suspension all amounts owing hereunder, including the full amount of any invoice rendered by Seller hereunder irrespective of its terms, shall immediately become due and payable without set-off by Buyer and all Product shipped or Service rendered hereunder may be stopped. Products in transit shall be returned to Seller at the expense of the party receiving the notice of termination. Buyer agrees to pay Seller's cost of collection of overdue invoices, including but not limited to, lawyer's fees and expenses. If this Agreement is suspended by the Seller, the Seller may elect to extend the term of this Agreement for a period equal to the period during which the Agreement was suspended.

10. **FORCE MAJEURE** In case of any act of God, strike, lock-out or other labour or industrial disturbance, accident to plant or machinery, fire, explosion, flood or other natural catastrophe, mobilization, war, act of any belligerent in any such war, rebellion, revolution, blockade, acts of terrorism, civil disturbance or commotion, riot or armed conflict whether declared or undeclared, embargoes, sufferance of or voluntary compliance with an act, regulation or guideline of government (whether or not valid), environmental limitation, rationing, allocation, inability to procure adequate supplies from normal sources of labour, transportation, energy, utilities, materials or supplies, delay caused by persons not party to this Agreement, damage or destruction of plants or any other circumstances, beyond the reasonable control of a party which prevents or hinders the Seller making or delivering Product or Service

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hereunder or prevents or hinders the Buyer from accepting delivery of the Product or Service, the party so affected may suspend the Agreement during the continuance thereof by immediately notifying the other, with written particulars to follow as soon as reasonably possible, and will not be responsible to the other party for damages on account of suspension of the agreement. Notice of suspension whether given by Buyer or Seller shall not entitle Buyer or Seller to suspend deliveries or acceptance of delivery of Product or Service except to the extent that such interference affects such deliveries or acceptance. Product or Service which Seller is so excused from delivering or Buyer is so excused from accepting shall be cancelled from the Agreement, unless otherwise mutually agreed. If by reason of any of the above circumstances, Seller's supply of the Product or Service herein specified becomes insufficient to meet all contractual commitments for the sale of the Product or Service, Seller shall have the right at its option and without liability to apportion its available sales or services supply among all its contractual customers on a pro rata basis or on any other reasonable basis that Seller decides. The potential ability of Seller to source Product or Service from alternate entities does not affect Seller's ability to declare Force Majeure. Buyer shall be responsible for payment pursuant to the terms of this Agreement for any Product or Service which is delivered or is in transit prior to notice of suspension. For greater certainty, economic or market conditions beyond the reasonable control of a party, including without limitation a decision to fully or partially shut-down or temporarily suspend production either at the Seller's or the Buyer's facilities which produce, treat or handle the Product or Service, shall constitute an event of force majeure.

11. **EXECUTION OF AGREEMENT** Acceptance by Buyer of any delivery of Product or Service hereunder shall be deemed acceptance of the terms and conditions of this Agreement and any modifications thereto approved by Seller, any writing or other notice by the Buyer to the contrary notwithstanding.

12. **ENTIRE AGREEMENT** This Agreement and any schedules attached thereto constitute the entire agreement between the parties hereto and there are no agreements, understandings, representations or warranties, oral or written, express or implied, of any kind not expressly set forth herein. This Agreement supersedes any inconsistent terms and conditions contained in any purchase order, invoice or other forms of either party.

No modification of, change to, supplement to or amendment to this Agreement shall be valid unless approved in writing by Seller. To the extent that there is any conflict between these General Terms and Conditions and the typed terms of this Agreement, the typed terms of this Agreement shall prevail. Notwithstanding the above, the parties acknowledge and agree that in the interest of time certain matters of a practicable business nature such as minor changes in delivery dates, shipment instructions, variances in orders and services and the like may be sent via electronic data interchange, telex or telephonic communication. The parties agree that such communication and any deliveries thereunder, shall constitute part of this Agreement and be subject to these terms and conditions.

13. **WAIVER** Waiver by a party of a breach of any provision of this Agreement shall not be deemed to be a waiver of future compliance with such provision. No delay or failure of a party to enforce any right or claim which it may have hereunder shall in any way affect, limit or waive such right or claim or the right of a party to compel strict compliance with each and every term and condition hereof.

14. **SEVERABILITY** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions hereof shall continue in full force and effect. The Buyer and Seller undertake to then negotiate the inclusion of such additional provisions as shall not be invalid or unenforceable as may be necessary to give effect to the original intentions of the parties with respect to the matter originally intended to be dealt with.

15. **NOTICE** Any notice to be given under this Agreement shall be in writing and may be given by mailing by prepaid registered mail addressed to the address of the party to whom such notice is to be given, as shown in the Agreement, by delivering the same to the party at said address, or by facsimile

transmission to the facsimile number shown in this Agreement, if any. Notice given by facsimile transmission shall be deemed to have been given on the day of transmittal, if transmitted during normal business hours, or on the next business day if transmitted outside of normal business hours. Notice given by mail shall be deemed to have been given on the fifth business day after mailing. Notice given by courier shall be deemed to have been given on the day of delivery. By mutual agreement, the Buyer and the Seller may instead deliver any notice to be given under this Agreement by electronic data interchange.

16. **SUCCESSORS AND ASSIGNS** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and, where a natural person is a party to this Agreement, to his or her heirs, executors and administrators.

Buyer may not assign any benefit or obligation under this Agreement without the written consent of Seller, which consent shall not be unreasonably withheld.

17. **GOVERNING LAW** This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario Canada. The parties agree that all disputes shall be submitted to the jurisdiction of the courts of the Province of Ontario Canada and to attorn to that jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

18. **REMEDIES** The remedies set forth in this Agreement shall be in addition to any other rights and remedies provided in law and equity, unless expressly limited herein.

19. **ETHICS** Buyer and Seller each represent and warrant that neither it nor its directors, officers or employees (nor, to the best of its knowledge, its subcontractors or agents) have engaged, or will engage, in any conduct which may be in violation of the Corruption of Foreign Public Officials Act (Canada) or the Bribery Act (UK) or the Foreign Corrupt Practices Act (USA), whether or not directly applicable to the transaction, and any other law concerned with the prevention of bribery and corruption applicable to the parties' respective performance under this Agreement. The parties each covenants that no part of any consideration herein shall accrue for the benefit of any government official or candidate for public office in violation of applicable anti-corruption and bribery laws. Without limiting the foregoing, the Buyer shall at all times act consistently in all material respects with the applicable principles of the following written policies of Seller in performance of this Agreement:

(a) Business Principles and Code of Conduct published at <http://www.glencore.com/>

(b) Global Policy on Bribery, Fraud and Corruption published at <http://www.glencore.com/>