

## **Auris Noble LLC's Standard Terms and General Operating Conditions**

*Unless otherwise stipulated, these Standard Terms and General Operating Conditions "Standard Terms" are applicable to transactions and/or contracts between Auris Noble LLC, "Auris", and Customer. "Customer" is defined as any business, corporation, company, person, entity, or anyone else transacting business with Auris in any manner whatsoever. Any contract or agreement entered into between Customer and Auris will operate as if the terms represented in these Standard Terms were made expressly a part thereof. Auris's Standard Terms are the governing document with respect to any and all business dealings between Auris and Customer and shall override any and all provisions, terms, and stipulations in Customer purchase orders, sales orders and/or any other Customer documents. Auris's failure to object to any terms, provisions, and/or stipulations represented in any Customer documents that are at variance with Auris's Standard Terms shall not be deemed a waiver of the terms and conditions contained herein. Any acknowledgement by Customer of these Standard Terms with changes made to it by Customer constitutes a counter-offer to our stated Standard Terms.*

**Warranty of Title:** Customer warrants to Auris Noble that it has good and marketable title to said property, full authority to sell and transfer said property, and that said property is sold free of all liens, encumbrances, liabilities, and adverse claims of every nature and description whatsoever. Customer further warrants that the said property is not from or the result of illegal activity in this country or any other country. Customer further warrants to Auris that it will fully, defend, protect, indemnify, and hold harmless Auris and its lawful successors and assignees from any adverse claim thereto. Customer warrants that any transaction initiated by Customer will not cause Auris to be in violation of any anti-money laundering, anti-terrorism, or other applicable law of the U.S., any state or province thereof or any foreign country.

**Forum/Jurisdiction:** Any and all legal proceedings to enforce this Agreement, whether in contract, tort, equity or otherwise, shall be brought in the State or Federal Courts sitting in Summit County, Ohio, the parties hereto hereby waiving any claim or defense that such forum is not convenient or proper, and/or that the court lacks personal

jurisdiction over Customer. Auris and Customer each hereby agree that any such court shall have “in personam” jurisdiction over it, consent to service of process in any manner prescribed by Ohio Law, and agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner specified by law. Further any and legal proceedings to enforce this agreement shall be governed by the laws of the state of Ohio.

**Insurance, Delivery, Weighing, and Sampling:** Customer shall be fully responsible for properly insuring any incoming shipments, unless otherwise agreed to in writing. To insure incoming shipments through Auris, Customer must notify Auris, within a reasonable period of time, of any shipments destined for Auris premises. Failure to do so will result in Customer bearing the risk of loss of the material until such time as Auris is able to insure the incoming material. Auris makes no warranty, expressly or implied of guarantee of insurance. Risk of loss of material will pass from Customer to Auris upon delivery to and acceptance at Auris premises, unless otherwise agreed. Upon receipt by Auris of metal sent by Customer for refining and acceptance by Auris, Auris shall bear the responsibility of insurance for loss or damage to such metal while at Auris.

Any and all metal sent by Customer shall be labeled bearing the gross, net, and tare weights of said metal. In an effort to minimize refining costs, Auris may request Customer material be packaged in a particular way prior to shipment to Auris. Customer must follow all instructions that Auris may give to Customer regarding the packaging of material. Material that arrives packaged in a manner other than that requested by Auris may be subject to processing fees. All weights of Customer material are to be ultimately determined by personnel of Auris. In the event Customer’s material should arrive at Auris with any broken seals, damaged seals, or seals that evidence tampering, Auris will seek Customer permission prior to the weighing, sampling, assaying, and/or any other procedures with respect to said material, unless otherwise agreed to in writing. Settlement weights are determined and governed by Auris.

Auris's acknowledgment of receipt of Customer material shall not constitute agreement as to the quantity, weight, composition, or description stipulated by Customer. Auris shall, within a reasonable amount of time, inspect Customer material and shall promptly notify Customer of any significant variances in the material including but not limited to quantity, weight, and composition of the material. Auris shall keep Customer informed of the processing of Customer's material. Customer must notify Auris within a reasonable period of time from receipt of notice of any reported variances to make an objection concerning such variances. Customer's failure to so object shall be deemed a waiver by Customer of any claim Customer may have against Auris with regard to such variances. Any disagreement between Auris and Customer resulting in a frustration of the agreement, and requiring return of unrefined material, will be done at the Customer's expense.

**Deleterious Elements:** Customer MUST contact Auris Noble and seek approval prior to shipment of material containing any of the following elements.

|                 |                   |                  |                 |                   |                          |
|-----------------|-------------------|------------------|-----------------|-------------------|--------------------------|
| As -<br>Arsenic | Be -<br>Beryllium | Bi -<br>Bismuth  | Cd -<br>Cadmium | Hg -<br>Mercury   | Ni - Nickel              |
| Pb -<br>Lead    | Sb -<br>Antimony  | Se -<br>Selenium | Sn - Tin        | Te -<br>Tellurium | Radioactive<br>materials |

Failure to disclose the presence of these elements may result in any of the following including but not limited to: (a) The return of Customer's metal to Customer at Customer's expense, (b) A handling fee of up to \$5000.00 and/or disposal and waste treatment costs.

**Melting and Assaying:** From each lot and/or melt Auris shall collect, to the best of our ability, a representative sample in the form of a button, bar, thief sample, and/or by and through any sampling procedure Auris may deem appropriate for the given material. This sample is then used to conduct an analysis of Customer's material.

Auris will conduct assay trials and report the results to the Customer. Customer has forty-eight (48) hours in which to object to the assay

report after which time the assay report will be deemed accepted by Customer and the right to contest the assay report will be deemed waived. Upon objection by Customer to the assay report, Auris may pursue various options including but not limited to: (a) negotiating mutually agreeable figures with which to compute the precious metals contained in the lot or melt, or (b) agreeing with Customer to solicit an umpire assay (third party assay). Note: Auris will dispose of any and all precious and non-precious material including but not limited to any slag, magnetic, and or any precious and non- precious material not requested by Customer for return. Auris shall be free of any liability to return any additional metal not requested by Customer and/or agreed upon by Customer and Auris or specifically noted in the refining terms. Settlement times may vary depending on available production capacity and the nature of the material tendered. Settlement shall not occur during weekends, legal holidays and Auris's vacation periods.

**Charges:** Unless otherwise agreed, Customer agrees to pay any and all preparation, treatment, refining, and/or any other customary charges related to the said material. Sales, use, excise, and/or any other taxes or assessments, levies, or governmental charges be it federal, state, local that are in addition to the above mentioned charges shall be paid by the Customer. All charges become payable after Customer receipt of the invoice. Auris is entitled and empowered to withhold delivery of any returnable or transferable metals or money due to the Customer until such time as all amounts due to Auris by Customer are received. In attempting to retrieve any monies due Auris by Customer or its assigns, Auris reserves the rights and remedies including but not limited to: (a) to cancel any Customer order (b) to refuse to make further deliveries due to Customer (C) to declare due and payable immediately any and all unpaid amounts for goods previously delivered to Customer.

All Auris charges are payable upon the rendering of an invoice. Acceptance of check, draft, credit card payment(s), or any remittance except legal tender (cash) shall not constitute payment until such payment processes are completed and any pay period to contest any charges reflected on this invoice have expired. Until such time, Auris shall be deemed to retain title to and a security interest in all material covered by any Auris invoice to secure the payment of the same. If Customer fails to make payments when due, the amount unpaid is subject to an interest charge of ten percent (10%) per annum

discounted to represent the amount of time passed for which payment has not been received. This interest rate is subject to fluctuation without notice based on current bank base lending rates.

**Power of Attorney:** Customer hereby appoints Auris as Customer's attorney-in-fact, with full power of substitution, to demand, receive, and collect for Auris's own use and benefit all debts, obligations, and accounts receivable now owing to Auris. Customer further authorizes Auris to do all things legally permissible, required, or deemed by Auris to be required to recover and collect the debts, obligations, and accounts receivable and to use Customer's name in any manner Auris may deem necessary for the collection and recovery of the debts, obligations, and accounts receivable but without cost, expense, or damage to Customer.

Additionally, as a course of business, Auris reserves the right to offset refining charges by liquidating Customer's pool account to the extent that such charges are paid. Such charges include but are not limited to any overdraft fees, unpaid fees or charges, and handling fees for deleterious materials for which Customer is responsible. Customer empowers Auris to offset and/or liquidate any Customer pool account under any company or corporate name where Customer is found to have common ownership, to secure any and all debts owed to Auris. In addition to any costs incurred by Auris in connection with Its enforcement of any sums of money, or metal, or value thereof due hereunder or enforcement of its rights hereunder, if Auris employs an attorney to enforce collection of any sums due hereunder or to enforce any of its rights hereunder, in whole or in part, then Customer will pay a reasonable fee representing such attorneys' services including costs, regardless of whether suit is instituted, and whether at trial, on appeal, in mediation, arbitration, or administrative proceedings.

**Pool/Toll Account:** A pool account is a ledger account representing the amount of returnable metal owed to Customer (if account reflects a positive balance), or the amount of metal owed to Auris (if the account reflects a negative balance). Precious metals are fungible; therefore any unit of material is equivalent to another of like kind i.e. similar quality and/or value, and is deemed adequate payment for purposes of outstanding Pool Accounts. Returnable metal represented in a Customer

Pool Account does not pertain to specific, segregated, or identifiable metal; rather it represents a future obligation of Auris to return common inventory of gold, silver, platinum, palladium, or other platinum group metals. Auris reserves the right to return precious metals to Customer of like kind representing the ounces of precious metals owed to Customer. Auris reserves the right to offset negative balances in Customer's pool account with respect to any and all metal in Customer's pool account by purchasing and/or liquidating any metals reflecting a positive balance in Customer's pool account. Auris Noble reserves the right to price out any unfixed ounces remaining in Customer pool account in an effort to settle Customer lot. Should Customer desire to leave ounces un-priced in Customer pool account, Customer must notify Auris in writing at least twenty four (24) hours prior to the settlement date of the respective lot; after such time has elapsed, Customer shall be deemed to have waived such right.

**Consignment:** It is expressly agreed upon by both parties that any and all material shipped to Customer, and/or delivered to Customer, and/or released to Customer on a consignment/bailment basis remains the property of Auris, with a security interest in Auris, until the material is returned to Auris in its entirety with interest paid, or material of equal quality, kind, and value is returned to Auris. Customer does not have legal title to such property until the above obligations are fulfilled. Should Customer transfer, assign, sell, or attempt to pass title to said material in any other way, Customer will be responsible for returning to Auris material of like kind, representing the same value.

**Auris Purchases:** Customers will be paid according to their returnable metals. The returnable metal represents the amount of precious metals contained in the Customer lot minus any assessed refining charges and/or any other charges. Returnable metals shall be in the form of fine gold bars and/or granulation unless otherwise agreed. Unless agreed fine gold bars and/or fine gold granulation shall assay a minimum .9999 fine, and the fine silver bars and/or granulation shall assay a minimum .999 fine. Returnable Platinum, Palladium, and Platinum group metals shall assay a minimum of .9995 fine. Auris shall not be liable for direct or consequential losses stemming directly or indirectly from market fluctuations, contamination by customer, and/or any other cause

whatsoever as a result of late delivery of any material by Auris. Auris delivery schedules are subject to change without notice.

**Advances:** Should Customer request an advance and Auris approve such a request, Customer will be responsible for any deficit in Customer's account as a result of an over-advance. Customer will be charged of \$1.00 per ounce per day with a minimum charge of \$150.00. (Subject to change without notice) Any and all security interest in Customer's material held by Customer will be reduced by the amount of such advance. Upon Auris transferring consideration, in the form of wire transfer, check, metal transfer or otherwise, to Customer for and against Customer's metal, Title to said metal shall pass immediately to Auris. After said metal is sampled, Auris Noble may co-mingle, destroy, or use said metal in any manner Auris deems appropriate. Advances will only be made against lots and/or material for which the estimated elemental content has been Price Fixed.

**Fixing of Metal:** Customer has the following options when fixing precious metals with Auris:

**1. SPOT – price is determined by Auris Trading Personnel based on the metal price as determined by global markets at the time of fixing.**

**2. LONDON PM- fix request must be received by Auris Trading Personnel by 9:30 AM E.S.T. the day of the fix**

*Note: Auris Noble LLC market prices may reflect a slight discount as stipulated by market conditions and the Customer will be notified as appropriate.*

Customer warrants that any purchase or sale contract has been effectuated by Customer for the sole purpose of securing pricing for the ultimate sale or purchase of precious metals and has not been made for any speculative reason whatsoever. Customer hereby has an obligation to deliver or purchase said metal to or from Auris within ten (10) business days from the effective contract Trade Date. Should Customer fail to deliver/purchase said metal within ten (10) business days, Auris reserves the right to reverse and/or offset this outstanding sales/purchase contract. In the event of a reversal of this contract, Auris will be responsible for the return of any monies due Customer as a result of the offset within a reasonable amount of time. Should the offset

result in Customer owing moneys to Auris, Customer shall be responsible for said funds and Auris may take the following steps to recover said funds owed and outstanding, including but not limited to: (1) liquidation of customer's pool account, (2) liquidation of customer balance, (3) legal action in furtherance of an attempt by Auris to recover funds due as a result of a reversal of this contract. If legal action is required, customer hereby accepts full responsibility for any reasonable costs and/or fees and/or expenses incurred on behalf of Auris in furtherance of this legal action.

Upon the commencement of a trade with Auris, Customer shall receive an e-mail from Auris confirming the trade details. Customer shall be responsible for providing Auris with a proper e-mail address to which trade confirmations shall be sent. Customer shall also bear responsibility for notifying Auris should any changes occur in regards to the desired recipient of the e-mail and/or e-mail address therein. It shall be the responsibility of Customer to notify Auris in the event Customer conducts a trade with Auris and does not receive an e-mail confirmation. Further, Customer agrees that should Auris's records show that Auris sent an e-mail confirmation to Customer, Customer shall be conclusively deemed to have received said e-mail confirmation. By agreeing to the terms and conditions contained herein, and receiving an e-mail confirming the details of Customer's trade, Customer agrees that he has entered into a written, legally binding contract for the sale/purchase of precious metals contained within the confirmation e-mail. Customer further warrants that said contract is in compliance with the Ohio Uniform Commercial Code § (chad)

**Force Majeure:** If Auris Noble LLC is prevented from completing performance of any or all of its obligations under this Agreement by an act of God or any other occurrence beyond its control, then Auris Noble LLC shall be excused from further performance upon notice to Customer stating the reason for the nonperformance. Additionally, the parties understand that performance by Auris may be interrupted or delayed by an occurrence outside of its control, including but not limited to the following: an act of God e.g. tornadoes and floods, war, riot, sovereign conduct, loss of electrical power for any reason whatsoever, or conduct of third parties. If that should occur, Auris Noble LLC shall be excused



from performance for as long as reasonably necessary to complete performance.

**Liability:** Under no circumstances shall Auris Noble LLC be liable for any incidental or consequential damages incurred by Customer for breach of any obligation arising out of or relating to the transactions herein or to the subsequent sale or use of returnable metals delivered to Customer hereunder. Except otherwise provided, the aggregate liabilities of Auris to Customer arising out of or relating to any breach of warranty shall not exceed the aggregate refining fees actually paid by Customer to Auris in regard to the materials or returnable metals which are the subject to the breach.

As a condition precedent to conducting business with Auris, Customer agrees that if Customer fails to comply with any of its obligations herein, Customer will indemnify and hold Auris harmless from all injuries, costs, suits, expenses (including without limitation attorney's fees and other costs of defenses), liabilities, fines, penalties, judgments, cost of settlement, losses and other damages that Auris may incur as a result of such failure by Customer.

**Integration:** This instrument contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any oral representations or modifications concerning this instrument whether arising from any usage or trade, course of dealing, accepted industry practice, course of performance, evidence of consistent additional terms, or otherwise, shall not be binding upon either party unless such modifications are both in writing and signed by both Auris and Customer.

**Parties:** Both Parties agree that they are merchants as defined in the Uniform Commercial Code of Ohio.

**Waiver:** The waiver by Auris of any Customer breach of these Standard Terms or forbearance of Auris to enforce its rights hereunder shall not operate as or be construed as a waiver of subsequent breach by Customer or a waiver of rights of Auris Noble LLC.

**Severability:** If any provision of these Standard Terms is found by a court of competent jurisdiction to be wholly or partially invalid, the remaining provisions will nonetheless be valid and enforceable. The terms and conditions set forth herein contain schedules and terms and conditions are subject to change without notice. Upon receipt of these Standard Terms and General Conditions, whether via fax, mail, or in person, I, and/or the company I represent and/or for which I am an agent, agrees to be bound by the terms, conditions, stipulations, rules, and regulations contained herein. Delivering material or doing business with Auris after having received the Standard Terms and General Operating Conditions deems that I have agreed to accept the Terms and General Conditions contained herein regardless of whether I have signed this agreement.

Further, I warrant that I am an authorized agent of "Customer" and have the full actual authority to enter into this agreement and conduct the type of business in which I am engaged with Auris Noble LLC. **Sending and tendering material in for refining constitutes binding acceptance of the policies described in this document.**