



# Seller Company Ltd

## Sales and Purchase Agreement

SPA Transaction Code:

NCNDA Code:

IMFPA Code:

### **DEFINITIONS**

“the Bank” means the Bank of xxxxxxxx

“KG” means Kilogram

“PB” means performance Bond

“FCO” means Full Corporate Offer

NOW THEREFORE, in consideration of the promises and mutual covenants herein set forth, the **SELLER** and the **BUYER** hereby agree as follows:

### **1. COMMODITY DESCRIPTION**

- **Commodity** - Alluvial Gold Dust
- **Format / Bar size** - Boxed Gold Dust
- **Purity** - xx.xx %
- **Quantity** - xxx kg with roles and extensions
- **Price** - US\$xx,xxx per kg ( on completion of Refining process)
- **Commission** - Included in the price
- **Payment** - By LC
- **Destination** - BUYERs request
- **Origin** - xxxx
- **Quality** - Plus xx Carats

### **2. QUANTITY**

Initial consignment of **xxx kg** with rolls and extensions as agreed by the **SELLER** and the **BUYER**.

**SELLER's** Initials \_\_\_\_\_ **BUYER's** Initials \_\_\_\_\_

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### 8. DOCUMENTS

The **SELLER** undertakes that the **SELLER's** Bank shall authenticate and shall guarantee the production of all necessary documents and that each delivered tranche shall be accompanied by the following documents:

- a) Certificate of Origin
- b) Certificate of Ownership
- c) Local Certificate of Assay
- d) Certificate of Weight List
- e) Commercial Invoices (4 Originals made out to the **BUYER**)
- f) Certificate of Insurance
- g) Custom Clearance
- h) Export Permit
- i) Bank Warranty of Delivery
- j) Certificate of Non Criminal Origin
- k) Certificate averring that the Gold is free of all liens and encumbrances and is freely tradable and exportable.

(Note: Not exhaustive)

### 9. PAYMENTS

#### 9.1 Payment to the SELLER

Payments to the **SELLER** shall be made to the **SELLER's** bank, in clear and clean United States Dollars of non-criminal origin of the full amount for the purchasing of the Gold taking into consideration also Article 3 and Article 4 of this Contract.

These payments shall be made upon the closing of each and every tranche, without any protest, delays, and/or deductions (other than bank wire transfer fees and routine banking delays). All banks' wire transfer expenses shall be on the **BUYERS** account and received by the **SELLER's** bank, net of bank transfer fees.

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### **SELLER's BANK**

Bank Name:

Bank Address:

Beneficiary Account Name:

Beneficiary Account No.:

SWIFT Address:

Reference / Message:

Bank Officer Name:

Bank Officer Phone:

### **Bank Officer Details for SELLER:**

**Name:**

**Phone:**

**Fax:**

**Email:**

### **BUYER's BANK**

Bank Name:

Bank Address:

Beneficiary Account Name:

Beneficiary Account No.:

SWIFT Address:

Reference / Message:

Bank Officer Name:

Bank Officer Phone:

### **Bank Officer Details for BUYER:**

**Name:**

**Phone:**

**Fax:**

**Email:**

SELLER's Initials \_\_\_\_\_ BUYER's Initials \_\_\_\_\_

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### 10. OBLIGATIONS OF BUYER

- a.) Buyer irrevocably undertakes that the Gold remains the property of Seller until Seller has received full payment of the agreed price.
- b.) Buyer confirms to purchase the Gold once their refinery assays the Gold Dust and confirms the actual pure gold content and weight.
- c.) After preliminary assay in xxxxxx the gold will be exported into (buyer's country) under the Seller's trading and export licenses observing all legal regulations.
- d.) Buyer agrees to inform Seller continuously about the location of the Gold and the state of its processing. ( the Seller can have a representative escorting the gold throughout the process if so desired)

### 11. PROCEDURES

- a.) The buyer confirms their intent to purchase by signing this contract of Sale/Purchase.
- b.) Upon confirmation of the PB and LC the Seller will deliver the agreed volume of Gold to the bond store.
- c.) The gold will be signed into bond storage in xxxxx by the seller.
- d.) The relevant government department will confirm the weight of the actual Gold for export documentation purposes.
- e.) The metal will be held securely in xxxxxxxx Bond storage prior to and after the local assay is conducted.
- f.) The gold will be made ready for export to the buyer's nominated airport. All necessary fees will be paid in xxxxxxxxxx by the seller, and all necessary documents will be prepared.
- h.) The gold will be shipped (under the joint names of the buyer and seller) to the buyer's nominated airport after the buyer's refinery and logistics team confirm that the timetable is acceptable.

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- i.) The buyer and their logistics team will meet the consignment and arrange for the consignment to be delivered to the Refinery.
- j.) The gold will be delivered to the refinery where it will be smelted and assayed.
- k.) The assay certificate will be issued by the refinery. This will be sent via email/fax to the buyer, the seller and to their respective banks.
- l.) Once the assay is issued the buyer's bank will release via electronic advice the amount of funds agreed to the seller's bank.
- m.) Once the funds clear into the account of the seller the seller's bank will release 100% ownership title to the buyer.

### 11. **AUTHORITY TO SIGN**

The Parties warrant that each party has full and complete legal authority and responsibility to execute this Sale and Purchase Contract and that its execution also bonds their respective Principals to the terms and conditions herein set forth.

### 12. **FORCE MAJEURE**

This Contract shall be governed by the "Force Majeure Clause" of the International Chamber of Commerce of Paris – France which clauses are deemed to be incorporated herein.

### 13. **GOOD FAITH**

All parties to this contract shall act in good faith at all times.

SELLER's Initials \_\_\_\_\_ BUYER's Initials \_\_\_\_\_

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### 14. ARBITRATION

Any disputes and controversies arising in connection with the performance or interpretation of this Contract which can not be settled amicably shall be finally settled by arbitration carried out according to the then existing Rules of Arbitration of the International Chamber of Commerce by three arbitrators. The **SELLER** and the **BUYER** will each appoint one arbitrator and the third arbitrator shall be appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration shall be in English unless the parties otherwise agree.

### 15. CONFIDENTIALITY

Each party agrees to keep this Contract confidential and not to disclose the TRANSACTION CODE and TRANSACTION description, **BUYER** name, or **SELLER** name, or the names of any banks or other institutions party to this transaction unless if it is for the sole purpose of this Contract.

It is understood, that the **BUYER**, expressly reserves the right to deal with any bank, depository, public or private, that he has dealt with in the past, or decides to pursue transactions with in the future, including those institutions that may be used in completing this TRANSACTION, regardless of this TRANSACTION.

### 16. UNDERTAKING

Each party whose signature is affixed hereto warrants and represents, under the risk and penalty of perjury, that:

**16.1** To the best of his knowledge, this TRANSACTION does not involve any violation of any law or regulation of any country involved in this TRANSACTION, nor does it involve any violation of international law.

**16.2** To the best of his knowledge, no person with whom he is associated or affiliated in any way with regard to this TRANSACTION intends to do anything, which would violate any

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law or regulation of any country involved in this TRANSACTION, nor does it involve any violation of international law.

**16.3** To the best of his knowledge, no Specially Designated Nationals, Specially Designated Narcotics Traffickers, Foreign Terrorist Organizations, Blocked Persons, or targeted countries, as designated by the Office of Foreign Assets Control is now or will hereafter be a party to this TRANSACTION or share in any benefits of this transaction.

### **17. INDEMNITY**

The **SELLER** indemnifies the **BUYER** against any claim that a national or international authority may make against the **BUYER**, its directors, officers, agents or its employees, for dealing with the Gold sold under this agreement, or by the **BUYER** entering into this agreement.

### **18. CLEAR TITLE AND WARRANTIES:**

- A. **SELLER** confirms and warrants that the Gold to be sold is free and clear of any liens and encumbrances. The **SELLER** further confirms and warrants that the GLD gold to be sold is not subject to any legal action and has no criminal origin.
- B. **SELLER** warrants with full legal responsibility and under penalty of perjury that it has full power, right, authority and ability to enter into this contract to sell and deliver the commodity specified herein, that the said commodity has no criminal origin and that it has the full power to perform all the **SELLER's** obligations under this contract.
- C. **SELLER** warrants with full legal responsibility and under penalty of perjury, that the commodity specified herein does not contain mercury nor is it radioactive.
- D. **SELLER** will procure from the Bank and provide to the **BUYER** a copy certified by a public notary of declarations A, B and C above, substituting the name of the Bank for the **SELLER** wherever appearing.
- E. **SELLER** declares and warrants that it will not use any of the funds it receives from this transaction for any purpose that breaks any national

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or international laws. The **SELLER** indemnifies the **BUYER**, against any claim where any third party government or authority makes any claim against the **BUYER**, where the **SELLER** has breached this clause.

### 19. TITLE OF GOODS

Ownership of the commodity delivered shall pass from the **SELLER** to the **BUYER** or its nominee upon payment.

### 20. NATURE OF COMMITMENTS

**SELLER** and **BUYER** herewith agree to accept the procedures set out in this document.

### 21. BINDING AUTHORITY

This document is a full commercial agreement binding on the parties hereto, their assigns and successors and is signed with full authority to act.

### 22. APPLICABLE LAWS AND JURISDICTION:

- a. Any action or legal proceeding related to this Agreement shall be adjudicated in accordance with ICC rules and regulations.
- b. This contract shall be governed by and construed in accordance with the laws of the United States of America.
- c. Any dispute arising out of or in context with this contract or related to any agreement of contract concluded as a result of this contract shall be settled by arbitration. The seat of the arbitration tribunal shall be under the laws of arbitration as interpreted in the USA, and the proceedings shall be conducted in English with 3 arbitrators, 1 chosen by each party and the third chosen by those 2 or if no agreement by the Secretary General of the ICC.

### 23. CONFORMITY WITH INTERNATIONAL REGULATIONS:

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The **SELLER** and the **BUYER** declare to one another that the commodity offered herein for sale and the origin of the funds used for purchasing the commodity do not contravene any of the following laws or involve any other illegal or criminal activity:

- a. The Drug Trafficking Act of 1986
- b. The Criminal Act of 1988
- c. The Prevention of Terrorism (Temporary Provisions) Act of 1989
- d. The Criminal Justice (International Cooperation) Act of 1990
- e. The Criminal Justice Act of 1993
- f. Trade Secret of 1979: Economic Espionage Act of 1993  
(18 U.S.C. 1839 -3)
- g. The Anti-Terrorism Act and the Patriot Act I and II (2003 and latest revision)

This document is valid until exhausted. This document supersedes any and all prior contracts and agreements, and represents the entire agreement between the Parties. No changes, alterations, or substitutions shall be permitted unless the same shall be notified in writing and signed by both Parties.

### 24. SIGNATURES

In consideration whereof, the two parties have agreed that this Contract is made in xxxxxxxxx and hereunto set their signatures on this xx<sup>th</sup> day of xxxx 2009

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**Signed by and/or on Behalf of the SELLER**

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\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Witness Print Name**

\_\_\_\_\_  
**Signed by and/or on Behalf of the BUYER**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Witness Print Name**

**SELLER's** Initials \_\_\_\_\_ **BUYER's** Initials \_\_\_\_\_