

U.S. Zinc Corporation
Sales Contract
Terms and Conditions of Sale

These Terms and Conditions of Sale (this "Agreement") are incorporated into the Sales Contract (the "Contract") between U.S. Zinc Corporation ("Seller") and the designated buyer ("Buyer") (together the "Parties"). If there is a conflict between this Agreement and the Contract, the Contract shall control.

The materials contemplated in the Contract which are to be sold to Buyer are referred to herein as "Materials." Each delivery/shipment of Materials shall be deemed a separate sales transaction (each an "Order").

1. **Controlling Terms and Conditions.** To the extent the Contract contemplates that Buyer may place Orders, from time to time, the method in which Buyer places the order (i.e., by telephone, email, or submission of a "purchase order") shall not affect these terms and conditions. Seller objects to, and shall not be bound by any term or condition on any Order which is different from or in addition to the terms and conditions set forth herein. Any additional or different terms or conditions proposed by Buyer are hereby expressly rejected. *The parties acknowledge that to the extent Buyer submits its own form of purchase order (or a similar document) as a means of placing an Order, submittal of such documentation and the subsequent delivery of Materials by Seller as contemplated thereby shall not be deemed to supersede, amend or modify this Contract unless the documentation specifically states that it is the intention of the Parties to amend the terms hereof and such specific provision is initialed by both Parties.*

2. **Separate Sale.** The failure of Seller to make delivery of a specific Order shall not affect any other deliveries contemplated by this Contract.

3. **Termination.** Seller may cancel any outstanding Order(s) or this Contract in its entirety if Buyer fails to carry out any of the terms of this Contract or any other contract with Seller, including, but not limited to, the failure to make payments in accordance with the terms hereof or thereof, or if Buyer suspends payments on its indebtedness, becomes insolvent or subject to any insolvency proceeding or reorganization or makes arrangements with its creditors. In such event, Buyer shall pay to Seller for damages with respect to any and all quantities thus cancelled, including any amount equal to the amount by which the Contract price exceeds the market price at the time of the cancellation. This amount shall be in addition to any other remedies that may be available to Seller.

4. **Volume and Delivery.** The quantities of each Order are subject to variations of plus or minus ten percent (10%) at Seller's option. The quality and weight of Materials shown on Seller's delivery ticket are presumed correct; however, Buyer may file a claim relating to quality noncompliance or quantity deficiencies within ten (10) days of delivery. The claim must be accompanied by a proof certified by a qualified surveyor. Buyer may not cancel the purchase of a non-complying portion of an Order unless Seller has failed to replace such non-complying Materials within a reasonable time after the failure to meet such specifications is established. The failure to deliver a claim meeting these time and proof requirements shall be deemed to constitute acceptance of the quantity and quality of the Materials by Buyer.

5. **Representation of Solvency.** Buyer agrees to neither order nor accept Materials from Seller while insolvent within the meaning of Section 1.201(23) of the Texas Business and Commerce Code ("UCC"). Every order placed, or delivery accepted, while insolvent shall constitute a written misrepresentation of solvency to Seller within the meaning of Section 2.702(b) of the UCC, or any successor Section of the UCC.

6. **Payment for each Order**

a. **Remittance:** All payments should be made in U.S. Dollars and remitted via check and/or wire transfer in accordance with Seller's instructions. If not otherwise specified in this Contract, all payments should be made within 30 days after the date of invoice. Buyer shall pay the price of the Materials without setoff, counterclaim, or any other rights which Buyer may have against Seller. If payment is due on a non-banking day when banks are not open to transmit or receive funds, payment shall be remitted on the banking day immediately preceding the due date.

b. **Provisional Payment.** If the pricing or weight is not finalized prior to the time when payment is due, Buyer shall remit a timely provisional payment based upon Seller's invoice. Payment by either party for final settlement shall be remitted within three working days when final weights and prices are known.

c. **Late Charge.** If Buyer fails to pay by the due date thereof any sum required to be paid by Buyer to Seller hereunder, Buyer will pay to Seller for each delinquent payment interest on the delinquent amount from the due date thereof until the date paid at the rate of the lesser of (i) 1½% per month (18% per annum) or (ii) the maximum amount permitted by applicable law. Buyer shall also pay Seller all reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Seller in connection with Seller's efforts to collect such delinquent payment or payments.

d. **Taxes.** Except as specifically addressed by the Incoterms designated in the Contract, Buyer shall bear and pay all taxes (excluding Seller's income taxes), duties, levies and other similar charges imposed, levied by any government arising out of this Contract or any Order, including, without limitation, withholding, sales, use, value added, registration, excise, documentary taxes, duties, levies and other charges, regardless of whether such are payable by the Seller.

e. **Surcharges.** Seller reserves the right to add other charges upon prior written notice to Buyer, including but not limited to fuel surcharge, environmental fee, government levy or additional delivery charges. Buyer may object to such charges within ten (10) days of receipt of such. If the Parties cannot agree on such charges within ten (10) days following Buyer's objection, Buyer may, as its sole remedy, cancel the remaining portion of the Contract by issuing a written notice to the Seller after expiration of the aforesaid period. Notwithstanding the foregoing, acceptance of Materials after such notice shall be deemed acceptance to the terms of such notice. In addition, Buyer shall pay the prices of Materials delivered prior to the Seller's receipt of Buyer's objection notice.

7. **Title/Risk/Compliance with Transportation Regulations.** Seller shall retain a security interest in the Materials until Seller has received the full contracted amount for the Materials. Except for the retained security interest, full title and risk of loss shall pass to Buyer upon delivery to Buyer or Buyer's agents (i.e., transportation company).

8. **Compliance with Laws and Materials Stewardship.** Seller and Buyer are committed to promoting effective Materials stewardship and appropriately managing environmental, health, safety, and regulatory considerations with respect to the Materials. Seller agrees that when using the Materials (and all materials derived from, or containing some or all of, the Materials), it will comply with all applicable federal, state, and local laws. Buyer is solely responsible for complying with, at its own expense, all applicable federal, state, or local laws, including, but not limited to, those relating to occupational health, safety, and/or the environment

(collectively “HSE Laws”), and shall secure any required permits, licenses, approvals, or other authorizations applicable to Buyer's operations and the purchase, handling, transportation, storage, and use of the Materials (and all materials derived from or containing some or all of the Materials), and the distribution, marketing, sale, and use of all materials resulting from or containing some or all of the Materials. Buyer will timely provide appropriate and/or legally-required environmental, health, safety, and regulatory information related to the Materials (and all materials resulting from or containing some or all of the Materials) to Buyer’s employees and to all of Buyer’s customers of materials resulting from or containing some or all of the Materials. Buyer hereby agrees to indemnify and hold Seller, its employees and agents, harmless from and against any and all claims arising from any breach of Buyer’s obligations in this section.

9. **Materials Use.** Seller is selling the Materials as new and useful Materials, and it is Seller’s intent that no portion of the Materials, or any materials derived from or containing some or all of the Materials, be disposed or otherwise handled, transported, stored, processed, or used in such a manner as to create any liability for Seller, including but not limited to, any liability under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and/or any other HSE Laws. Buyer is therefore solely responsible for evaluating and determining whether the Materials are suitable and appropriate for Buyer’s particular use and intended application. The conditions of evaluation, selection, and use of the Materials can vary widely and affect the use and intended application of the Materials. Because many of these conditions are uniquely within Buyer’s knowledge and control, Buyer must evaluate and determine whether the Materials are suitable and appropriate for a particular use and intended application. Buyer assumes all risks related to the purchase of the Materials, and subsequent handling, transportation, storage, use, distribution, and marketing of the Materials, and all materials resulting from or containing some or all of the Materials. Buyer hereby agrees to indemnify and hold Seller, its employees and agents, harmless from and against any and all claims arising from any breach of Buyer’s obligations in this section.

With regards to any United States Pharmacopeia (USP) grade materials, Buyer agrees to (i) comply with all applicable US Food and Drug Administration (“FDA”) regulations including specifically the Current Good Manufacturing Practice (“cGMP”) regulations enforced by the FDA, and (ii) not repackage or relabel any such materials. Buyer shall indemnify Seller against any liability incurred Seller arising from a breach of these obligation. Once Buyer takes possession of such material, it is not eligible for cancellation or return.

10. **Warranties.** Seller warrants that the material delivered hereunder shall conform to the specifications or grade described in the applicable Contract or Order, within any stated tolerances. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.**

11. **Force Majeure.** If any shipment hereunder is prevented or delayed due to:

a. labor difficulties or a fire, flood, earthquake, tidal wave, hurricane, typhoon, tornado or other natural calamity, war, civil commotion, riots, revolution, blockage, embargo, strike or other labor disputes or delay, interruption, cancellation, suspension or other non-performance of any transportation contract for any reason under which Seller has arranged for delivery of Materials;

b. any prohibitions, requirement, regulation or order of a national or local government or any condition which affect any raw material required for the production of the Materials; and/or

c. any and all disabling causes or contingencies beyond Seller’s control whether of the nature of those conditions hereinabove mentioned,

Seller shall not be liable for any delay in shipment or for non-delivery for all or any part of the Materials or any other failure to perform any of its obligations hereunder and may cancel or postpone the shipment hereunder. The time of Seller to make delivery of any Order hereunder shall be extended during any period in which such delivery shall be prevented or delayed by reason of any of the foregoing issues, provided that if any delivery hereunder be prevented or delayed for more than three (3) months either party shall have the right to cancel the Order with respect to such delivery by written notice to the other. In the event Buyer declares force majeure for the Materials which has been shipped, Buyer shall be responsible to Seller the demurrage costs, storage costs and other expenses created by the force majeure

12. **Limitation on Damages.** Except as otherwise stated herein, the sole and exclusive remedy of Buyer or any other party against Seller for all claims of any kind, whether based on contract, tort (including negligence), breach of warranty or otherwise, for any loss or damages arising out of, connected with or resulting from the sale or failure to sell, shall be replacement of such Materials sold hereunder, or, at Seller's option, refund of the purchase price paid for the Materials(s) and shall in no event be greater than the invoiced value of the Materials(s) as supplied and fully paid for. **No other remedy shall be available to the Buyer (including, but not limited to, indirect or consequential damages, lost profits, lost sales, punitive damages, injury to persons or property or any other incidental or consequential loss).**

13. **Export Control.** Buyer acknowledges that the Order may concern products that may be controlled or restricted under the U.S. Export Administration Regulations or the Office of Foreign Assets Control, or other applicable laws and regulations relating to the export or import of products and may be subject to the approval of the U.S. Department of Commerce or Treasury, respectively, prior to export. Any export or re-export of the Materials by Buyer, directly or indirectly, in contravention of the export control laws, economic sanctions laws or other applicable laws or regulations is prohibited, and Buyer shall comply with all such laws and regulations, as well as the U.S. Foreign Corrupt Practices Act and similar laws of applicable foreign jurisdictions. Buyer shall not seek to influence sales or other business affairs by means of bribery, kickbacks, illegal payments or other ethically questionable inducements, including gifts or anything of value. Additionally, the Materials shall not be sold for use in, or to parties that are suspected to be involved in, the development, production, use or stockpiling of weapons of mass destruction; to entities or individuals on any applicable lists of parties denied export privileges (including, without limitation, <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>), or to parties in any embargoed countries. This provision constitutes an independent covenant and continuing obligation of Buyer and shall survive the termination of this Contract.

14. **General.**

a. This Contract contains the entire agreement between the Parties and supersedes any prior oral or written agreements or communications between them relating the subject matter hereof. No oral representations shall be binding unless set forth herein.

b. Buyer may not assign, in whole or in part this Contract or an Order without the express consent of Seller. This Contract and each Order shall enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

c. No waiver by Seller of any provisions of this Contract shall be effective unless in writing and shall be effective only to the extent of such waiver. Any such waiver shall not constitute a waiver of any other provision of this the Contract or any subsequent breach.

d. This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of the State of Texas sitting in Houston, Texas, and of the United States District Court for the Southern District of Texas sitting in Houston, Texas, in any action or proceeding arising out of or relating to this Contract. Each party hereby irrevocably waives, to the fullest extent permitted by law, any right to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Contract or the transactions contemplated hereby or thereby (whether based in contract, tort or any other theory). The losing party shall pay the reasonable attorneys' fees of the prevailing party in action or proceeding arising out of this Contract. If any provision hereof is declared invalid or unenforceable, the balance of this Contract will remain in full effect, and the invalid or unenforceable clause will be automatically reformed only to the minimum extent necessary to become valid and enforceable

e. The provisions of the "Incoterms" (published by International Chamber of Commerce) valid at the date of this Contract and/or each Order (as applicable) shall apply insofar as the same are not inconsistent with the terms and conditions stated herein.

f. Subject to the Limitations on Damages provisions above, the remedies set forth in this Contract are in addition to any and all remedies provided by the UCC and other applicable law.

g. Seller shall have the right of offset any amounts due or to become due to Seller under this Contract against any amount due or to become due to Buyer under any other contract between Buyer and Seller.

h. Seller may at its option defer performance under this Contract or require prompt payment or the opening of a Letter of Credit, or require any other acceptable security or collateral, in the event of circumstances which, in the reasonable judgment of Seller, may have an adverse effect on the creditworthiness of Buyer and/or Buyer's ability to perform its obligation hereunder.