



## PM RECOVERY INC. - PURCHASE CONTRACT GENERAL TERMS AND CONDITIONS

1. **Governing Terms of Contract:** Seller's signature on the face hereof constitutes unconditional acceptance of the terms and conditions set forth herein. In the event Seller fails to sign and return this Purchase Contract to Buyer, Seller's shipment of materials identified on the face hereof to Buyer constitutes Seller's unconditional acceptance of the terms and conditions set forth herein. In either event, the terms and conditions set forth herein are controlling and govern this transaction, and may not be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller.
2. **Price:** Buyer shall not be billed at prices higher than stated on this Purchase Contract unless authorized by a Change Notice issued and signed by a duly authorized representative of Buyer. Terms of payment shall be net cash thirty (30) days after invoice or upon receipt of material and verification of weight and grade, whichever is later, unless otherwise specified on the face hereof. The price quoted on the face hereof does not include applicable sales or use taxes unless otherwise stated.
3. **Risk of Loss:** Risk of loss or casualty shall remain with the Seller until actual delivery to the F.O.B. point.
4. **Timing and Delivery:** Time is of the essence of this Purchase Contract and delivery in full must be made as set forth on the face hereof. Seller acknowledges that Buyer is contractually obligated to redeliver the goods, materials or commodities that are the subject of the Contract to one or more customers, and accordingly any delay in shipment by Seller shall constitute a material breach hereunder. Under such circumstances Buyer shall have the right to cancel the Contract in whole or in part, to claim damages for such breach, and to avail itself of such other and further remedies as are available to an aggrieved buyer under the Uniform Commercial Code in force in the State of New York. Seller shall be liable under such circumstances for any and all losses, costs, claims and liabilities paid or incurred by Buyer, directly or indirectly, on account of Seller's breach hereunder, including without limitation any incidental and consequential damages, such as loss of profits which, but for Seller's breach, Buyer would have earned on the timely resale of conforming goods, material or commodity. Partial delivery or partial performance shall not extend the final delivery date for the balance beyond that specified unless permission is given in a written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller. Buyer further reserves the right, without limitation, to purchase substitute materials on the open market and to charge the Seller for the difference between the contract price and the open market price plus all associated charges and expenses.
5. **Specifications:** Changes in the specifications, content or nature of the materials shall not be made unless authorized by a written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller.
6. **Inspection:** The materials identified in this Purchase Contract shall conform to Buyer's specifications. The materials identified herein are subject to inspection and approval at the destination or other agreed location. Unless otherwise stated on the reverse hereof, Buyer's classification, sorting, sampling, weighing, assaying and appraising and other analysis and inspection, performed in accordance with Buyer's standard practice, and reports of the same shall be final and binding upon Seller. Buyer reserves the right to crush or otherwise consume turnings or other samples where deemed necessary in order to assure accurate assay or inspection. Crushing of the material shall not be deemed an acceptance thereof. Buyer reserves the right to reject or refuse acceptance of any material which is shown by such inspection not to be in accordance with the instructions, specifications, drawings and/or data or Seller's warranty (express or implied). Buyer may charge Seller for the cost of inspection and other expenses incidental to the rejection of any such material. Any material not accepted shall be held for Seller's disposition or returned to Seller, both at Seller's cost and expense. Seller is obligated to replace rejected materials, except when specifically notified to the contrary by Buyer. Payment for any material hereunder shall not be deemed an acceptance thereof.
7. **Packing:** No charges shall be allowed for packing, crating, freight, express cartage or other transportation charges except to the extent expressly agreed by Buyer and provided for in this Purchase Contract. All shipping materials shall be shipped on a no charge or consignment basis or returned freight collect, at Buyer's option.
8. **Warranties:** By submitting to this Purchase Contract, Seller represents and warrants that the all material supplied pursuant to this Contract shall fully conform to Buyer's specifications, drawings, data and/or Seller's samples and that the materials furnished hereunder shall be fit for the same use intended by Buyer, which warranty shall survive the acceptance of the items identified herein. This warranty shall be in addition to any other warranty given to Buyer by Seller or provided for by law. Any attempt by Seller to limit liability or to restrict the application of warranties provided for by law shall be of no effect. Buyer shall further have the benefit of all warranties and all of the remedies provided for a buyer under the Uniform Commercial Code of New York, without limitation or restriction.
9. **Environmental Representations and Warranties:** All scrap alloys and fluxes shall be within safe radioactive limits. Materials shall not contain any hazardous or contaminating substance such as (without limitation) oxide primer paint, sealed containers, radioactive materials, cement, stone, refractory or wood. Any shipment containing potentially hazardous or contaminating material, no matter the amount, shall be subject to rejection with all associated costs therefor being born by the Seller.
10. **Governing Law; Compliance with Laws:** This Purchase Contract shall be construed in accordance with the laws of the State of New York, and specifically its **Uniform Commercial Code**, without regard to its conflict of laws provisions. Buyer and Seller expressly agree that the UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS **shall not apply** to the transaction(s) memorialized in the Contract. Seller represents by acceptance hereof that it has complied and shall continue during the performance hereof to comply with the provisions of all federal, state and local laws and regulations from which liability may accrue to Buyer on account of any violation thereof.



11. **Indemnification:** Seller agrees to indemnify and hold Buyer harmless from and against any and all claims made or brought by Seller, Seller's employees and/or any third party for death, personal injury or damage to property arising out of or in any way connected with the material specified on the face hereof, the use or misuse thereof and/or the delivery or non-delivery thereof. Seller further agrees to indemnify and hold harmless Buyer from and against any and all claims made or brought by any third party for Buyer's failure to deliver the materials that Seller is obligated to supply under this Purchase Contract owing to Seller's breach or default. Seller, at its sole cost and expense, shall defend any and all such claims, actions, suits or proceedings brought against Buyer in connection with any such foregoing claim upon notice of the pendency thereof and shall pay and satisfy any and all judgments, settlement amounts, costs, counsel fees, awards or recoveries relating thereto.
12. **Modifications:** No modification of this Purchase Contract shall be binding unless set forth in a writing signed by duly authorized representatives of both parties.
13. **Confidentiality:** The contents of this Purchase Contract are, and shall remain, confidential, and Seller shall not reveal any part hereof to any third party without Buyer's prior written consent in each instance.
14. **Force Majeure:** Buyer shall have the right to cancel this Purchase Contract at any time, notwithstanding Seller's acceptance of this contract, in the event Buyer is unable to use or otherwise dispose of the material identified herein because of fire, flood, strikes, casualties, delays in transportation, inability to obtain other materials or machinery, war, acts of God or any other cause beyond the control of the Buyer.
15. **Bankruptcy or Insolvency of Seller:** In the event of any proceedings, whether voluntary or involuntary, in bankruptcy or insolvency, by or against the Seller, whether under Federal or State laws or in the event of an appointment, whether voluntary or involuntary, of an assignee for the benefit of creditors or of a receiver or trustee for the Seller, then the Buyer shall be entitled at its sole and exclusive option to cancel any portion of this Order remaining unfilled without any further liability or responsibility hereunder.
16. **Waiver and Assignment:** Buyer's waiver of any default of Seller hereunder shall not constitute a waiver of any remedy given by law or provided for hereunder for any subsequent default. Seller shall not assign any of its rights or obligations hereunder without Buyer's prior written consent in each instance, in Buyer's sole discretion.
17. **Arbitration:** Any dispute, controversy or claim arising out of or relating to this Purchase Contract or the performance hereof or the goods delivered hereunder shall be referred to, and determined and settled by, arbitration in accordance with the Rules of Practice and Procedure then obtaining of the American Arbitration Association, or the Institute of Scrap Recycling Industries, Inc., at Buyer's option, sitting in New York City. The Buyer and Seller hereby consent and submit to the jurisdiction of the Supreme Court of New York and agree that such Court may issue such orders or judgments as may be necessary to compel arbitration hereunder, or to enforce any award made by the arbitrators. The Buyer and Seller further agree that any process or notice of application or motion to such Court or a Judge thereof may be served outside the State of New York by certified mail or by personal service, or in any other manner permitted by the Civil Practice Law and Rules of the State of New York.
18. **Insurance:** In the event that the Contract to which these Terms relate calls for delivery to Buyer on CIF terms, Seller shall provide insurance coverage from Seller's facility through carriage or conveyance (by whatever means) and up to the point of delivery at Buyer's designated facility, in an amount equal to **one hundred ten percent (110%)** of the invoice amount of the commodity, materials or goods that are the subject of such Contract.