

TERMS AND CONDITIONS OF CONVERSION SERVICES

The terms set forth in our Sales Order and the following terms and conditions are the terms and conditions that control our provision of services to you.

Definitions

The term “we”, “our” or “us” means MetalX, LLC. The terms “you” or “your” mean the customer designated on the Sales Order. The term “Sales Order” means the “Sales Order” form completed by us to confirm or set out certain terms of the agreement between you and us for the provision of services. The term “Terms” means the terms and conditions set forth in this document. The term “Agreement” means the terms and conditions set out in the Sales Order as supplemented by the Terms. The term “Services” means the conversion services contemplated in the Agreement. The term “Our Site” means a conversion facility owned or leased by us, by one of our affiliates or by a converter that we have engaged in accordance with this Agreement.

Rejection of Your Terms

No terms proposed by you, whether set forth in a purchase order, contract, confirmation, order, other document or other communication, will be binding on us and we hereby specifically object to and reject such terms.

Applicable Terms

If you sign the Sales Order or otherwise agree to its terms, the Agreement will constitute the entire agreement between you and us with respect to our provision of our services and will supersede any prior agreements, written or oral, between you and us. If the Sales Order is a confirmation of a verbal agreement between you and us and you do not sign it or otherwise agree to its terms, your delivery of Unprocessed Material (as defined below) to us and our provision of Services to you will constitute your acceptance of the Agreement.

Delivery of Materials and Bailment

You agree, at your sole cost and expense, to deliver to us aluminum or other non-ferrous scrap metal of the type and in the quantities as specified in the Sales Order (“Unprocessed Material”). We will accept, hold, process and convert the Unprocessed Material in accordance with the term of the Agreement.

Care of Unprocessed Materials

We will accept, hold, protect, and care for the Unprocessed Material as your property. We will maintain the Unprocessed Material at Our Site only and, unless otherwise agreed by you, the Unprocessed Material will, at all times, be segregated from our material and the material of any third party.

Condition of Unprocessed Material

Except as otherwise provided in the Sales Order, all Unprocessed Material will be delivered to us free of all oils, grease, dirt, stones, trash, ferrous metals and other foreign materials (collectively, the “Foreign Materials”). Cutting oils and lubricants used on or added to Unprocessed Material in connection with machining processes in a manner and amount consistent with your historical quantities and industry practices will not be considered Foreign Material, but could result in additional processing fees and/or lower recoveries. We reserve the right to refuse to process any Unprocessed Material containing Foreign Material and, upon any such refusal, you agree to arrange and pay for the removal of the refused material from Our Site. If we do elect to process Unprocessed Material containing Foreign Material, you acknowledge that anticipated yields may be negatively impacted and you agree that, if we incur additional costs related to processing and converting the Unprocessed Material, to pay us drying, handling and processing fee surcharges, as applicable, as set forth in the Sales Order or, if none are specified, as reasonably determined by us to cover our additional costs and expenses.

Conversion of Unprocessed Material

We will convert the Unprocessed Material into sows or ingots (“Converted Material”) in accordance with the instructions which may be provided, from time to time, by you. All sows and ingots will be marked with identifying information that will allow us to distinguish your Converted material from the Converted Material of others. If your Converted Material is so marked or labeled, it need not be physically segregated from other Converted Material.

Completion of Processing

All Unprocessed Material will be converted into Converted Material within forty-five (45) days of our receipt of the material.

Shipment of Converted Material

You will be solely responsible for arranging for and all costs and expenses of shipping and transporting the Converted Material to you or any other designated person. We will load the Converted Material at Our Site on any conveyance arranged by you.

Fees

You agree to pay the processing fee set forth in the Sales Order.

The processing fee is the fee charge per pound of Unprocessed Material received by us. Our weights will control. Our processing fees will be invoiced to you upon completion of processing or upon any other basis specified in the Sales Order. Your payment will be due thirty (30) days after the invoice date and any payments not timely made will be subject to a late charge of one percent (1%) per month. We will also be entitled to collect from you the reasonable attorney’s fees incurred by us in collecting processing fees due to us.

Conversion Fee Adjustment

Except as otherwise provided in the Sales Order, the conversion fee set forth in the Sales Order will be subject to adjustment as of the first day of each calendar quarter of each year the Agreement remains in place. No change in the conversion fee will be effective, however, unless and until we have provided at least thirty (30) days advance notice of a change in the fee.

Minimum Processing Quantities

You acknowledge and agree that the processing fee set forth in the Sales Order will be in force only if you provide any minimum monthly quantities provided for in the Sales Order. If the average monthly quantities of Unprocessed Material provided during any calendar quarter are less than the specified monthly quantity, we have the right to impose a processing surcharge of up to the amount specified in the Sales Order for all Unprocessed Material processed during said calendar quarter.

Warranties

Unless a guaranteed recovery or chemistry is set forth in the Sales Order, we do not warrant, guaranty or otherwise agree to any minimum Converted Material recoveries or any particular chemistry. We do warrant and agree that our services will be performed in conformance with industry standards. If we breach our warranty to conform to industry standards, you may, at your option, (i) have us, at our expense, re-perform the Services; or (ii) deduct from any unpaid balance (or be entitled to a refund for) the actual damages incurred by you, subject to a maximum equal to our processing fees for the defective Converted Material. Said remedies are the sole and exclusive remedies for breach of our warranties.

Inventory Reports

We will provide you with regular written inventory reports setting forth the quantity of Unprocessed Material and Converted Material held by us. Except as otherwise specified in the Sales Order, the inventory reports will reflect the inventories as of the last business day of each calendar month, and will be provided to you on or before the 10th day of the following calendar month.

Risk of Loss

We will bear the risk of any loss caused by (i) the negligence or any willful or intended act of us or any of our agents or employees, or (ii) the theft or other unexplained disappearance of the Unprocessed Material or Converted Material. You will bear all other risk of loss of or to the Unprocessed Material or Converted Material, including, but not limited to, all losses resulting from an Act of God.

Storage of Converted Materials

We will store Converted Material at Our Site for up to thirty (30) days following the completion of your Unprocessed Material into the Converted Material at no cost to you. If you continually provide Unprocessed Material to us for processing, we will provide storage of Converted Material beyond thirty (30) days up to the maximum specified in the Sales Order or in a written notice we provide to you. Following said thirty (30) day period or you reaching any specified maximum, we may notify you that Converted Material (all or the excess amount, as applicable) must be removed from Our Site. Within ten (10) days of receipt of such notice, you must have arranged for and completed the shipment of the Converted Material from Our Site. Converted Material not removed from Our Site within ten (10) days of our notice will be subject to a \$0.01 per pound storage fee for every thirty (30) days the Converted Material remains on Our Site. Alternatively, we may arrange to have your Converted Material shipped to a third party storage facility, with all shipping, transportation and storage fees chargeable to your account.

Title

Title to the Unprocessed Material and Converted Material will, at all times, remain with you. If you have granted permission for us to commingle the Unprocessed Material with other material owned or held by us, we hereby acknowledge and agree that you will own an undivided interest in the commingled Unprocessed Material on hand, from time to time, in proportion to the value of the Unprocessed Material delivered by you to us to the value of all material with which the Unprocessed Material has been commingled. If any of the commingled Unprocessed Material has been converted to Converted Material, your undivided interest in such Converted Material will also be determined on a proportional basis.

True Bailment and Security Agreement.

You and we hereby acknowledge and agree that our arrangement is a true bailment. However, should it be determined that the arrangement is a sale or other transaction, this Agreement will be deemed to constitute a security agreement and we hereby grant you a security interest in all of your Unprocessed Material and Converted Material to secure any and all of our obligations to you, including, but not limited to, the obligation to return the Unprocessed Material or the Converted Material to you.

Filings

You have full right and authority to file any financing statements or the like with any state or local official or office which will give proper notice of the existence of this Agreement and to perfect or protect your interests with respect to the Unprocessed Material and Converted Material. You authorize us to terminate any and all such financing statement filed by you if you no longer have any Unprocessed Material or Converted Material on Our Site or the only materials you have on Our Site are Unprocessed Material or Converted Material that you have failed to remove after our request.

Lien for Fees

You hereby grant us a lien on your Unprocessed Material and Converted Material to secure your obligation to pay the conversion fees, any storage fees, any additional processing fees and any other fees, charges or costs contemplated by this Agreement.

Your Right to Remove Material

You have the right to remove any or all of the Bailed Material or Converted Material from us at any time if all balances due or to become due to us have been paid in full. Upon your request to remove, we will load the Bailed Material and Converted Material in the conveyances arranged by you. You will be responsible for all other transportation costs.

Term and Termination

Unless a specific term is set forth in the Sales Order, the Agreement will continue in full force and effect until terminated by either you or us upon ninety (90) days advance written notice. Either you or we may also terminate this Agreement (i) upon any breach of any provision hereof not cured within ten (10) days (five (5) days for financial defaults) of notice of the breach, or (ii) in the event the other party becomes insolvent, or files a voluntary petition in bankruptcy, or enters upon voluntary liquidation, or if a petition in bankruptcy is filed against it or in the event of the appointment of a receiver, or an assignment by the other for the benefit of creditors.

In the event this Agreement is terminated by either Party, or a specific term set forth in the Sales Order expires, subject to our rights in this Agreement or applicable law, all Unprocessed Material and/or Converted Material in our possession at the time of such termination will be returned to you. Upon any such termination or expiration, we will load the Unprocessed Material and Converted Material in the conveyances arranged by you. You will be responsible for all other shipping and transportation costs.

Access to Property

You will have the right, during our regular business hours and after two (2) business days advance notice, to enter Our Site for the purpose of inspecting or making inventory of your Unprocessed Material and/or Converted Material or performing any act reasonably necessary to protect your interests under this Agreement.

Set-Off

We may exercise a set-off if you fail to pay us any past due fees or charges within five (5) days of our notice to you. In connection with any set-off by us, we will be entitled to retain and sell to others Unprocessed Material or Converted Material having a value equal to the amount due to us by you. The value of any material used in any setoff will be deemed to be the fair market value of the material at the time of the setoff.

Taxes

Unless otherwise stated in the Agreement, you agree to pay us all taxes and other governmental fees and charges assessed on the conversion and other fees due to us.

Limitation on Damages

Neither you nor us will be liable for any consequential, incidental, indirect or punitive damages incurred by the other party.

Excusable Delays

Neither you nor we will be liable for any failure or delay in performance attributable to any cause beyond our reasonable control. You and we both agree to provide notice of such cause to the other Party within ten (10) days of such event or circumstance. You or we may cancel all or any part of this Agreement if performance of the other Party has been delayed for more than sixty (60) days as a result of an excusable delay.

Assignment, Delegation and Change in Control

Your assignment of the Agreement or any of your rights under it without our prior written consent will be null and void and will constitute a material breach of the Agreement. We may delegate our duties under this Agreement to third parties, but we will be responsible for their performance to the same extent as we would be liable had we performed the Services. We may cancel this Agreement, in whole or in part, upon any change in control of you or your owners.

Amendments and Waivers

No amendment, modification, change order, waiver or release of any provisions of the Agreement will be binding on us without a writing signed by our authorized representative. Our failure in any one or more instances to require the performance of any term or condition in the Agreement will not act as a waiver of our right to insist on strict performance in the future.

Compliance with Laws

You and we agree to comply with all applicable local, state and federal laws, rules and regulations in conducting our business and performing our obligations under the Agreement.

Severability

If any provision of the Agreement is determined to be invalid, illegal or unenforceable, such determination will not render the other provisions of the Agreement invalid, illegal or unenforceable.

Applicable Law and Forum.

The Agreement will be deemed to have been made in Indiana and will be governed by the laws of Indiana, without regard to its choice of laws provisions. Any lawsuit or other proceeding initiated by you relating in any way to the Agreement or the transactions contemplated thereunder must be brought in the DeKalb County, Indiana Circuit or Superior Court or the United States District Court for the Northern District of Indiana, Fort Wayne Division. If we initiate a lawsuit or other proceeding against you, you consent to the jurisdiction of any of the foregoing courts, waive any venue objections and agree not to seek any transfer of the lawsuit or proceeding to another court. You agree to pay the reasonable attorney's fees incurred by us in moving any action initiated by you to one of the foregoing forums.