

## **Standard Terms and Conditions of Sale of Goods and Services**

*Placing an order confirms agreement with these Terms and Conditions*

### **1. Definitions and Interpretations**

1.1. In this Conditions:

*Conditions* means these standard terms and conditions of sale, as may be amended by XRFS from time to time;

*Contract* means a contract on the Conditions for the supply of Goods by XRFS to the Customer pursuant to an Order;

*Customer* means a person to whom XRFS supplies Goods;

*Goods* means all goods and/or services supplied by XRFS to the Customer;

*XRFS* means XRF Scientific Ltd (ACN 107 908 314); (ABN 80 107 908 314) and its subsidiaries;

Analytical Platinum Supplies Pty Ltd (ABN 69 094 039 013),

Precious Metals Engineering (WA) Pty Ltd (ABN 82 052 330 588).

XRF Scientific Products (ABN 27 094 326 897).

*Order* means an order for Goods placed by the Customer to XRFS;

### **2. Conditions of Sale**

2.1. The Conditions are deemed to be incorporated into all Contracts and supersede all terms and conditions previously issued by XRFS.

2.2. The Conditions will prevail to the extent of any inconsistency between the Conditions and an Order.

2.3. XRFS may accept or reject an Order in its sole discretion.

2.4. Where the Customer places an Order which contains terms and conditions different from the Conditions, subsequent delivery of the Goods to the Customer shall be deemed to be a counter-offer to supply the Goods on the Conditions and such counter-offer shall be deemed to be accepted by the Customer on acceptance of the Goods.

### **3. Variation**

3.1. No variation of these Conditions shall have any effect unless in writing and signed by or on behalf of XRFS.

### **4. Prices & Quotations**

4.1. A quotation for Goods is open for acceptance by the Customer up to 4:00 pm EST on the day the quotation is provided, however, that XRFS reserves the right to withdraw a quotation at any time before acceptance.

- 4.2. Unless specified, GST (Goods & Service Tax), if applicable, is additional to the price and is based on the rate ruling at the date of quotation with any variation to the Applicant's account.
- 4.3. XRFS reserves the right to vary any prices specified in a quotation to reflect metal market prices prevailing at the time of acceptance of order by XRFS.
- 4.4. Unless otherwise stated in a quotation, freight and insurance will be charged at rates prevailing on the date of dispatch for delivery.
- 4.5. All prices quoted and invoiced by XRFS are strictly net...

## **5. Taxes and Customs Duty**

- 5.1. XRFS reserves the right to adjust prices by an amount equal to any applicable sales tax, consumption, retail or value added or like tax, duty or charge payable by XRFS which may be levied on the sales of the Goods. XRFS is not liable for any customs duties or other charges, fines or assessments whatsoever levied on the Goods.

## **6. Manufacturing and Reprocessing Losses**

- 6.1 The reprocessing of precious metals is a complex series of events, which may include: cleaning, melting, assaying, refining, blending, re-melting, forming, rolling, pressing, milling, spinning, polishing etc. Each of these steps generates a (usually) small loss of metal. Some losses, such as cleaning, melting and assaying are individually identifiable quantifiable and chargeable. Others are less easy to allocate, and it is normal practice to cover such losses by applying "retention" to reprocessed metal. XRF Scientific and its' subsidiaries reserve the right to retain up to a maximum of 5% of reprocessed metal to cover unallocated production losses and processing costs. In practice, this retention is generally 1%, with higher retention for more complex products.

## **7. Sub-Contracting**

- 7.1. XRFS may, in its absolute discretion, sub-contract the manufacture, supply and/or delivery of the Goods.

## **8. Dispatch Dates**

- 8.1. Although XRFS will use its best endeavours to meet dispatch forecasts, dispatch dates given are estimates only and XRFS is not liable in any circumstances for loss or damage, whether direct or indirect, from delays in dispatch however arising.

## **9. Delivery**

- 9.1. Delivery to the Customer, and acceptance of the Goods for the purposes of clause 2.4 will be deemed to have been made when the Goods are delivered to either:
  - (a) the premises of the Customer or the premises nominated by the Customer; or
  - (b) A carrier commissioned by either the Customer or XRFS.

## **10. Separate Deliveries**

- 10.1. XRFS reserves the right to deliver Goods in instalments and, if delivery is made by instalments, the Customer shall not be entitled to terminate or cancel the Order or to compensation for any loss or damage, whether direct or indirect, by reason only of the delivery by instalments.

## **11. Predelivery**

- 11.1. In certain circumstances XRFS may deliver new product by arrangement with the client in anticipation of a similar weight of returned scrap product. Such scrap must be received by XRFS within 7 days of delivery of new product, or XRFS reserves the right to invoice for the full amount of the new metal at the governing spot prices, plus 20%, as well as fabrication and transportation charges.

## **12. Recovery of costs**

- 12.1. If the preparation of an Order or the delivery of Goods is delayed or suspended by the Customer's instructions or failure to instruct, XRFS reserves the right to adjust the price payable for the Goods to cover any extra expenses incurred by XRFS directly or indirectly as a consequence of the Customer's instructions or failure to instruct as the case may be.
- 12.2. If the Customer is unable to take delivery of the Goods when they are ready for dispatch, XRFS reserves the right to recover any costs incurred by it for the storage of such Goods.

## **13. Warranty**

- 13.1. Subject to clauses 13.4 and 13.5, XRFS warrants that the Goods shall:
- (a) be free from defective materials and workmanship;
  - (b) conform to such written specifications that have been expressly accepted by XRFS;
  - (c) If containing precious metals, conform to standard levels of purity as displayed elsewhere on this website.
- 13.2. The warranty shall not apply:
- (a) if the Goods are subject to misuse, abuse, accident or improper treatment;
  - (b) if the Goods are installed, used, maintained or operated otherwise than in accordance with instructions provided by XRFS;
  - (c) if the Goods are damaged by foreign objects;
  - (d) in respect of any damage arising from abrasion, erosion, corrosion, deterioration, or the like contributed to by abnormal temperatures, the influence of foreign matter or energy or the physical or chemical properties of water, steam or chemical compounds unless the Goods were supplied for a duty which contemplated the above contributing elements and in respect of which elements there is specific and detailed prior disclosure by the Customer.
- 13.3. XRFS's liability under the Warranty is limited, at XRFS's option, to:
- (a) the repair or replacement of such Goods or the supply of equivalent Goods; or
  - (b) The payment of the cost of repairing or replacing such Goods or supplying equivalent Goods.
- 13.4. Goods not manufactured by XRFS are sold only with such warranty as the manufacturer thereof has given to XRFS and as XRFS may be able to enforce.
- 13.5. Where Goods are sold for use in combination with other equipment or materials the Warranty is limited to the Goods sold and not to any combination with other equipment or materials.
- 13.6. The Warranty is the sole warranty in relation to the Goods and, to the extent permitted by law, all warranties and conditions in relation to the Goods whether expressed or implied by statute, common law, trade custom or usage are expressly excluded.

- 13.7. If any law (including the *Trade Practices Act 1974*) implies any condition or warranty into the Conditions, and that law avoids or prohibits provisions excluding or modifying the operation of such condition or warranty, then to the extent permitted by law, XRFS's liability for any breach of such a condition or warranty is limited to, at XRFS's option:
- (a) the repair or replacement of such Goods or the supply of equivalent Goods; or
  - (b) The payment of the cost of repairing or replacing such Goods or supplying equivalent Goods.
- 13.8. The Customer must notify XRFS of any claim that the Goods are defective within seven (7) days of receipt of Goods. XRFS reserves the right to require the Customer to return, at XRFS's cost, the defective Goods for examination by XRFS.
- 13.9. Once XRFS has complied with its obligations under clause 13.3, any Goods returned to XRFS pursuant to clause 13.8 will become the property of XRFS.
- 13.10. XRFS is not liable for any labour costs or other expenditures incurred by the Customer.

#### **14. Invoices and Payments**

- 14.1. XRFS will issue an invoice for the Goods to the Customer on delivery of the Goods as determined in accordance with clause 9. A minimum fabrication charge of \$300 will apply to all invoices issued.
- 14.2. Subject to clause 24 and unless otherwise stipulated, the Customer must pay the entire amount of an invoice in immediately available funds prior to delivery of the Goods as determined in accordance with clause 9.
- 14.3. If any sum remains unpaid after the due date for payment, XRFS may charge the Customer interest on the overdue amount at the rate per annum which is the aggregate of 2.0% and the prime lending rate published by Westpac Banking Corporation (or any rate that replaces that rate), from the due date for payment until the overdue amount including any accumulated interest is paid. Interest shall be calculated on daily balances.
- 14.4. The charging or payment of interest shall be without prejudice to any other rights or remedies XRFS may have to recover any amount due for Goods sold or agreed to be sold by XRFS.
- 14.5. In the event of default of the payment by the Purchaser all debt recover costs including legal cost on a solicitor/owner client basis and mercantile agent costs shall be deemed to be part of the indebtedness of the Purchaser to XRFS. Further, the Purchaser agrees to indemnify XRFS in respect of mercantile agent commission charged to it which shall be an amount not exceeding 18% of the monies due and payable as recorded on the statement of account by the Purchaser to XRFS.

#### **15. Lien**

- 15.1. Notwithstanding any other remedies XRFS may have in respect of unpaid debts due to it from the Customer, XRFS is entitled to a general lien on all goods or property of the Customer in XRFS's possession to cover any unpaid debts due to it from the Customer.
- 15.2. XRFS may, on fourteen (14) days written notice to the Customer, dispose of such goods or property of the Customer as XRFS thinks fit and to apply any processed received towards such debts.

#### **16. Right to Set Off**

- 16.1. XRFS may, at any time without notice to the Customer, set off any liability of the Customer to XRFS against any liability of XRFS to the Customer whether the liability of the Customer or XRFS is actual or contingent, primary, collateral or joint and several and whether expressed as a liability to pay money or a liability to delivery or transfer precious metal or goods.

#### **17. Retention of Title**

- 17.1. XRFS and the Customer agree that title to Goods delivered by XRFS to the Customer is only transferred to the Customer when the Customer has paid all sums owing to XRFS in relation to the relevant Goods whether under this or another contract.
- 17.2. Until the Customer makes payment in full for Goods and title to the Goods passes to the Customer in accordance with clause 17.1.:
- (a) the relationship between the Customer and XRFS shall be fiduciary and the Customer shall hold the Goods and any products into which the Goods have been incorporated as bailee and, at its own expense, store them separately in a manner that clearly identifies such Goods as the property of XRFS;
  - (b) The Customer must at all time and at its own cost maintain such insurance in respect of such Goods and any products into which the Goods have been incorporated as XRFS in its absolute discretion deems necessary. Where there is a loss or damage to Goods or any products into which the Goods have been incorporated, the Customer shall take all reasonable steps to claim for the loss and/or damage under the insurance described in this clause 17.2(b), and the Customer shall hold all monies paid under such insurance in trust for the Company in a separate account;
  - (c) notwithstanding any other provision of this clause 17, the Customer may sell Goods and any products into which the Goods have been incorporated in the ordinary course of the Customer's business and deliver them to any third party provided that:
    - i. the Customer shall not represent to any third party that it is acting on behalf of XRFS;
    - ii. the Customer shall not be entitled to bind XRFS to any liability to any third party whether in contract or otherwise;
    - iii. subject to clause 17.2(c)(v) below, the Customer shall enforce and be responsible for the enforcement of any contract for the sale of the Goods to the third party;
    - iv. where the Customer is paid by the third party, the proceeds of the sale shall be held in trust by the Customer for XRFS in a separate account; and
    - v. where the Customer is not paid by the third party, the Customer agrees at the option of XRFS to assign its claim against the third party to XRFS upon XRFS giving notice to the Customer in writing;
  - (d) XRFS shall be entitled to possession of the Goods and any products into which the Goods have been incorporated and may recover and sell the same and retain so much of the proceeds of sale as is equal to the amount owing by the Customer to XRFS;
  - (e) in addition to any other rights which XRFS may have under the Conditions or at law, the Customer gives XRFS, its agents and employees leave and licence, without the necessity of giving notice, to enter the premises of the Customer (or the premises of any associated company or agent of the Customer where the Goods are located) at any time to inspect, search for or retake possession of such Goods without liability for trespass or any resulting damage; and
  - (f) The Customer shall not mortgage, charge, encumber or create any other security interest over the Goods without XRFS's prior written consent.

## **18. Risk**

- 18.1. Notwithstanding Clause 17, Goods supplied by XRFS shall be at the sole risk of the Customer from the time at which they are delivered in accordance with clause 9.
- 18.2. XRFS shall not in any circumstances be liable for loss of or damage to Goods in transit to the Customer unless:
- (a) XRFS has agreed to deliver the Goods to a certain location and the loss of or damage occurs before the Goods arrive at the agreed location;
  - (b) any damage or shortage is reported in writing to XRFS and the carrier within seven (7) days after delivery; and

- (c) In the case of a total loss, the Customer gives written notice to XRFS of the non-arrival of the goods within a reasonable period (not exceeding two (2) weeks) after receipt of XRFS's invoice.
- 18.3. Goods returned by the Customer to XRFS shall be at the sole risk of the Customer until such Goods have come into custody of XRFS at the premises of XRFS where (having regard to the nature of the Goods and the reason for their return) the Goods will be unpacked and/or inspected. This clause 18.3 shall apply notwithstanding that the Goods may come into the possession or custody of XRFS at some earlier time, whether by collections or otherwise. Transit insurance can be provided by XRFS, through prior arrangement.

## **19. Cancellation**

- 19.1. If an Order is cancelled by the Customer, the Customer must pay for metal price movements and the costs incurred by XRFS up to and including the date of cancellation for all items ordered, supplied, or manufactured in execution of the Order.
- 19.2. XRFS may cancel an Order by a written notice to the Customer, and without prejudice to the recovery of any cost expenses incurred by it, if:
- (a) the Customer instructs XRFS to suspend manufacture of the Goods in fulfilment of the Order and does not instruct XRFS to recommence manufacture of the Goods in fulfilment of the Order within [14] days;
  - (b) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of XRFS:
    - i. process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
    - ii. an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
    - iii. a resolution that it be wound up is passed or proposed;
  - (c) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
  - (d) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
  - (e) the Customer enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
  - (f) The Customer ceases or threatens to cease carrying on his business or pay its debts as and when they fall due.

## **20. No assignment**

- 20.1. The Customer must not assign, transfer, create any charge or otherwise deal in any other way with any of its rights under a Contract without the prior written consent of XRFS which XRFS may give or withhold in its absolute discretion.

## **21. Tools**

- 21.1. Unless otherwise agreed by XRFS in writing, all tools, dies, patterns and other items made by or for XRFS for the execution of an Order, shall remain the property of XRFS notwithstanding any charge payable by Customer in respect thereof.

## **22. Intellectual Property**

- 22.1. XRFS accepts no liability for any claims against the Customer for any infringement of any patent or other intellectual property rights in the use, resale or offering for resale of the Goods.

## **23. Limitation of Liability**

- 23.1. Subject to clauses 13.3, 13.7 and 23.2, XRFS's liability to the Customer whether in contract, tort (including negligence) or otherwise in connection with or arising out of the supply of Goods shall not exceed the value of the relevant Goods supplied pursuant to the Contract.
- 23.2. In no circumstances shall XRFS be liable for any loss of profits, loss of opportunity, loss of revenue, loss of actual or anticipated savings, loss of goodwill, exemplary, punitive or special damages or any other indirect or consequential loss.

## **24. Force Majeure**

- 24.1. If the manufacture or supply of the Goods, or XRFS's ability to comply with its obligations under a Contract, is prevented, interrupted, hindered or delayed by any cause whatsoever beyond the control of XRFS including, but not limited to, strikes, lock-outs, raw material shortages, accidents or breakdown of plant machinery (*Force Majeure*) XRFS is excused from its obligations under the Contract for the duration and to the extent of the Force Majeure. If a Force Majeure continues for a period of [1] month, XRFS may terminate the Contract on written notice to the Customer.

## **25. Application and Extension of Credit**

- 25.1. The Customer may apply for trade credit by completing the attached trade credit application.
- 25.2. The extension of trade credit to the Customer shall be at the absolute discretion of XRFS at all times.
- 25.3. XRFS reserves the right to require a guarantee and indemnity to be given by any person in relation to an application for trade credit approval on such terms as may be determined by XRFS from time to time.
- 25.4. XRFS reserves the right, without prior notice, to refuse to extend any further trade credit to a Customer. XRFS's approval of this application does not require XRFS to extend trade credit to the Customer in any particular amount.
- 25.5. To allow XRFS to assess the Customer's application for trade credit, the Customer authorises XRFS to do each of the following, in accordance with the provisions of the *Privacy Act 1988*:
- (a) obtain from a credit rating agency, a credit report containing personal information about the Customer and any guarantor (if applicable);
  - (b) obtain from a credit reporting agency any other information in relation to the Customer's commercial credit activities; and
  - (c) give to and obtain from any credit provider named in the Customer's credit application and any credit provider named in a credit report issued by a credit reporting agency, information about the Customer's credit arrangements.
- 25.6. Where trade credit is approved in accordance with this clause 24:
- (a) XRFS will periodically issue an invoice to the Customer for the Goods;
  - (b) the Customer must pay the amount of the invoice, up to the approved trade credit limit, in immediately available funds on the last Business Day of the month following the month in which the invoice was issued or such other date as indicated on the invoice; and

- (c) The Customer must pay the amount of the invoice in excess of the approved trade credit limit, in immediately available funds promptly prior to despatch of Goods.

## **26. Governing Law**

- 26.1. The Conditions and any Contracts are governed by the laws of the State of Western Australia and XRFS and the Customer submit to the non-exclusive jurisdiction of the courts of Western Australia.

## **27. Severance**

- 27.1. If one or more provisions of the Conditions is or becomes void, voidable or unenforceable for any reason, the Conditions shall be read and enforced as if the void, voidable or unenforceable provisions had been deleted and all other provisions remain in full force and effect.

# TRADE CREDIT APPLICATION

## 1. Applicant Details

Name of Applicant \_\_\_\_\_

Registered Business/ Trading Name: \_\_\_\_\_

(If different to name of applicant)

Business Address: \_\_\_\_\_

\_\_\_\_\_

Customer Contact: \_\_\_\_\_ Title: \_\_\_\_\_

PO Box (if applicable): \_\_\_\_\_

ACN No: \_\_\_\_\_ A.B.N. No: \_\_\_\_\_

Home or Registered Office (if Company) address: \_\_\_\_\_

\_\_\_\_\_

Telephone No: ( ) \_\_\_\_\_ Facsimile No: ( ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

WWW Address: \_\_\_\_\_

**Type of Business Structure** (State where Public Company, Private Company, Trustee Company or Individual acting as Trustee, Partnership or Sole Trader) \_\_\_\_\_

Has entity ever been in receivership? Yes / No

Date Business Commenced \_\_\_\_\_ How long at this address: \_\_\_\_\_

Previous Address (if less than 5 years at current address): \_\_\_\_\_

\_\_\_\_\_

Premises: Leased / Owned: \_\_\_\_\_ Lessor: \_\_\_\_\_

Name of Accountant: \_\_\_\_\_

Telephone No: ( ) \_\_\_\_\_

## 2. Credit Details:

Maximum limit required \$ \_\_\_\_\_ Bank/Branch: \_\_\_\_\_

Bank BSB/Swift No: \_\_\_\_\_ Bank Account No: \_\_\_\_\_

Bank Account Name: \_\_\_\_\_

### **Business / Trading References:**

Business Name	Address	Telephone No.	Contact Name
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1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**3. Director/Partnership/Sole Trader Details:**

Full Name	Address	Telephone No.	Ever been Bankrupt?
1. _____	_____	_____	Yes / No
2. _____	_____	_____	Yes / No
3. _____	_____	_____	Yes / No

- **Director/partner/owner guarantees may be required if considered appropriate**
- **Financial statements may be required**

**4. Application for Credit**

- The APPLICANT HEREBY REQUESTS

(Please tick applicable entity)

- Analytical Platinum Supplies Pty Ltd (“APS”)
- Precious Metals Engineering (WA) Pty Ltd (“PME”)
- XRF Scientific Products

To open a credit account (“the Credit Account”) in the name of the Applicant on the terms and conditions (“the Terms and Conditions”) set out at the end of this application form.

- The Applicant agrees that, as from the date of this Application, all goods purchased by the Applicant from XRFS shall be purchased subject to the said Terms and Conditions.
- The Applicant DECLARES that the above information is true and correct in every particular and ACKNOWLEDGES that XRFS will rely upon the information provided when deciding whether to grant credit to the Applicant.

	<b>FOR AND ON BEHALF OF APPLICANT</b>	<b>WITNESS</b>
Signed		
Please print name		
Position		
Date		

**To be completed by the Sales Representative**

Name: \_\_\_\_\_ Branch \_\_\_\_\_ Date: \_\_\_\_\_

**Please comment on the following –**

**(a) Customer Profile/History/Profitability/Asset Base**

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**(b) Current & Potential Business with APS (in point form)**

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**(c) Other Comments:**

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**(d) List of Attachments:**

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**(a) TRADE REFERENCES – to be completed by Credit Controller**

<u>Name</u>	<u>Number Years</u>	<u>Average Month's Trading</u>	<u>Payment Terms</u>
1. _____	_____	_____	_____

Comments: \_\_\_\_\_

2. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Comments: \_\_\_\_\_

3. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Comments: \_\_\_\_\_

APPROVED BY	GENERAL MANAGER		
Name			
Signature			
Date			

**APPLICATION FOR CREDIT – IMPORTANT INFORMATION**

- The Applicant hereby requests XRF Scientific Ltd to open a credit account (“the Credit Account”) in the name of the Applicant on the terms and conditions (“the Conditions”) as attached.
- The Applicant agrees that as from the date of this application, all goods purchased by the Applicant from XRF Scientific Ltd shall be purchased subject to the Conditions (attached).
- The Applicant DECLARES that the information provided above is true and correct in every particular and ACKNOWLEDGES that XRF Scientific Ltd will rely upon the information when deciding whether to grant credit to the Applicant.
- The Applicant acknowledges that by completing this form they AUTHORISE XRF Scientific Ltd or it’s agent to conduct reference checks as considered appropriate in the consideration of this Credit Application.
- The Applicant DECLARES that the credit to be provided to the Applicant by the credit provider is to be applied wholly or predominantly for:
  - Business purposes; or
  - Investment purposes other than investment in residential property.

**IMPORTANT**

You should only sign this declaration if this loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may lose your protection under the Consumer Credit Code or National Credit Code (as applicable).

FOR AND BEHALF OF APPLICANT

WITNESS

SIGNED	.....	.....
PLEASE PRINT FULL NAME	.....	.....
POSITION	.....	.....
DATE	.....	.....