



NEW ZEALAND  
GOLD MERCHANTS

# Metal Application Terms and Conditions

## Interpretation

1. In this agreement unless context otherwise requires:

*Account* – means a **N.Z. Gold Merchants** account held by **N.Z. Gold Merchants** on your behalf or the purpose of facilitating any product or service, including holding or trading metals on behalf of the client.

*Authorised Agent* – means any person you have properly authorised to give trading or funding instructions to **N.Z. Gold Merchants** on your behalf in connection with your account.

*Available Funds* – means cleared funds, including funds which have been made available by means of direct debit.

*Business day* – means a day in which banks and foreign exchange markets are open for business in Auckland, New Zealand.

## General

2. This agreement applies to all dealings between the client (collectively referred to as “you” or “your”) and **New Zealand Gold Merchants Ltd** (collectively referred to as **N.Z. Gold Merchants**, “we”, “our” and “us”) regardless of the facility/device/mechanism used to facilitate the dealings.
3. We will not be responsible for any loss or liability incurred by you where we do not receive your instructions or where any dealing or proposed dealing is interrupted, unable to be completed or unable to take place due to the failure of any telephone, computer, other electronic or technological device.
4. Upon its commencement, this agreement replaces any agreement that currently exists between you and us and the obligations entered into under the prior arrangement will be treated as if they were entered into pursuant to this agreement.
5. You acknowledge that by placing an order with **N.Z. Gold Merchants** or creating an account, is evidence of your acceptance of this binding agreement.

## Your Commitments

6. You warrant that all information provided by you in your application is complete and correct and is not misleading, and agree that we may rely on that information unless and until we receive written notice of any change signed by you. Any such varied information will be covered by this warranty.
7. You warrant that you have full capacity, power and are otherwise properly authorised to enter into obligations and exercise rights pursuant to this Agreement. If you are a company, you warrant that you are duly incorporated and validly existing in your jurisdiction of incorporation. If you are the trustee of a trust or superannuation fund you further warrant that this Agreement is for the benefit of the trust or superannuation funds and that you have the right to be fully indemnified out of trust assets or the superannuation funds for obligations incurred under the Agreement.
8. You represent that at all times during your dealings with us you will be in a position to meet all your commitments and obligations arising from these dealings.

9. You acknowledge that we do not give personalised advice or make personalised recommendations and that is therefore your responsibility, before ordering the purchase or sale of any precious metal through us, to assess and evaluate the proposed transaction in the light of your then current financial situation, investment objectives and particular needs.
10. You acknowledge that the type, nature, extent, service provider or platform of any service, product or facility available to you may change from time to time. In such circumstances where it considers it reasonably necessary, **N.Z. Gold Merchants** provides notice to you of the change.
11. You acknowledge that **N.Z. Gold Merchants** is not responsible for the reliability, completeness or accuracy of any third party information it provides or makes available to you. **N.Z. Gold Merchants** shall choose third party providers that it considers suitable and use reasonable endeavours to inform you of any deficiencies (of which it becomes aware) with respect to any information.
12. You acknowledge that **N.Z. Gold Merchants** is entitled to rely on instructions from any Authorised Agent that you appoint until it has notice in writing from you a reasonable time before a transaction on your behalf is due to occur that such appointment has been revoked.
13. You acknowledge that **N.Z. Gold Merchants** has the right to correct any trading or administrative errors including but not limited to reversing or cancelling orders without your consent.
14. You acknowledge **N.Z. Gold Merchants'** operating policy as follows: **N.Z. Gold Merchants** endeavours to deal fairly and in due turn with all orders to buy and sell precious metals regardless of your instructions source or method of delivery. It is the practice of **N.Z. Gold Merchants** to enter all orders in the sequence in which they are received, and otherwise as expeditiously as practicable but no earlier than receipt of notification by **N.Z. Gold Merchants** from its bank of the purchase monies becoming available funds.
15. You acknowledge that all orders are automatically assigned an expiry date unless otherwise specified by you at the time of placing an order. This expiry date is 4:30pm NZ time of the Business day which the order was placed, unless otherwise extended at the sole discussion of **N.Z. Gold Merchants**. All transactions are real time and cannot be cancelled. Any foreign exchange rate utilized by us will be the applicable **N.Z. Gold Merchants** foreign exchange rate as at the time and on the date on which the transaction has been effected.
16. You agree and warrant notifying **N.Z. Gold Merchants** immediately of any errors or omissions in our records with respect to your details or Account.
17. You acknowledge that in times of highly volatile, fast moving and turbulent market conditions, all trade requests at the current "actual" market value ("live" pricing) unless otherwise agreed with **N.Z. Gold Merchants**.
18. You acknowledge that **N.Z. Gold Merchants** reserves the right to suspend trading, or immediate fulfilment of orders in times of high market volatility or fast moving market conditions.
19. You acknowledge that prices published by **N.Z. Gold Merchants** in daily price sheets (or otherwise) are for indicative purposes only and subject to this Agreement, the

pricing of your order is normally “locked in” (based on a premium over the spot price of the metals) at the time of order confirmation.

20. You acknowledge that all orders are FINAL. Once your order is confirmed, you cannot change, modify or cancel the order.
21. You acknowledge that it is your responsibility to take delivery of the metal.
22. You acknowledge that **N.Z. Gold Merchants**, at its sole discretion, may introduce or amend storage fees or storage conditions. **N.Z. Gold Merchants** will endeavour to notify you of such an amendment.
23. You acknowledge that this Agreement is governed by the laws of New Zealand.

### Your Instructions

24. All instructions are subject to the law, and the terms of this Agreement.
25. It is your responsibility to ensure that all instructions given to **N.Z. Gold Merchants** (whether by you or an Authorised Agent) are in accordance with the law, and this Agreement.
26. **N.Z. Gold Merchants** will make all reasonable efforts to carry out your clear instructions promptly, subject to clause 25. You acknowledge that where your instruction is given in writing, whether faxed, posted or by e-mail, the instruction will be deemed to have been received by us when we act on the relevant instruction. Accordingly, you accept responsibility to ensure that your written instruction has been received and actioned by **N.Z. Gold Merchants**.
27. We are not obliged to accept any application or instruction to trade.
28. We will act only within the parameters of your instructions.
29. If we consider it is our reasonable interest to do so and to the extent permitted by law, we may decline to act on your behalf in relations to any particular dealings, without explanation or advance notice. Additionally we may decline to act on your behalf:
  - Where we believe the transaction would result in no change of beneficial ownership:  
Or
  - Where we believe the instructions are ambiguous, incomplete or unclear.
30. If more than one person constitutes the client, then they are jointly and severable bound by this Agreement and we are entitled to act upon the instructions of any one of those persons. Unless specified otherwise on the account application form.

### Payment and Settlement Obligations

31. You must pay **N.Z. Gold Merchants**
  - a) Consideration for any purchase of precious metals, commission, fees and charges in connection with your Account at the rates and currency notified by us in writing from time to time
  - b) Any fees, taxes or other charges levied by a third party on **N.Z. Gold Merchants** in connection with your order or Account: and

- c) Interest on any unpaid amounts at the rate determined by us from time to time from the day the amount falls due until the date of the paid:
  - d) All costs, expenses/losses incurred by **N.Z. Gold Merchants** as a result of your failure to settle by due date including but not limited to, brokerage and administration fees, stamp duty, legal costs and debt recover costs.
32. You are required to provide Available Funds to pay for all costs in connection with a purchase of precious metals, by settlement date or at any earlier time as required by **N.Z. Gold Merchants**.

### **Authorities and Indemnities**

33. If more than one person constitutes the client, then they are jointly and severable bound by this Agreement and we are entitled to act upon the instructions of any one of those persons. Unless specified otherwise on the account application form.
34. In connection with the establishment of these arrangements and the collection of overdue payments, you authorise us to supply relevant information contained in your application form and other records to a credit reporting agency and to obtain credit reports about you from credit reporting agency.
35. You authorise us to record any telephone conversation(s) between you and us, with or without an audible tone warning device.
36. You agree to pay our normal commission fees and to reimburse us for any extraneous costs, such as GST, for transactions made on your behalf.
37. You authorise us to appropriate any credits, payments and other receipts from you or from your Account in such manner and order as we think fit against any amounts due or owing by you to us or otherwise.
38. You agree to indemnify, **N.Z. Gold Merchants**, its subsidiaries, and their respective directors, employees, contractors and agents against all costs, including but not limited to losses, damage, actions, proceedings, claims, costs (including legal costs), demands, damages, liabilities or expenses which may be brought against, suffered or incurred by **N.Z. Gold Merchants** by reason of breach of this Agreement.
39. You agree to release to **N.Z. Gold Merchants**, its subsidiaries, and their respective directors, employees, contractors and agents from any obligation or liability with respect to any loss, whether direct or consequential, that you suffer or incur in connection with your business dealings with **N.Z. Gold Merchants**.
40. **N.Z. Gold Merchants** shall not be liable for any loss arising in connection with the operation (including delays and errors) breakdowns, disruption to or malfunction of any system, device or service.

### **Variation**

41. We reserve the right to vary this Agreement. Any variation of this Agreement shall apply to all dealings between you and us from the day on which the variation takes effect. If we vary this Agreement, we shall give not less than seven days notice to you at the postal or electronic address last notified to us by you. However, we may

make a variation without prior notice where such variation is necessary to restore or maintain the security of our systems or any Accounts.

## Notice

42. Any notice, request, demand or other communication may be sent to your postal or electronic address last notified to us and the notice, request, demand or other communication shall be taken to have been received by you if sent by prepaid letter on the Business day following posting and if sent by facsimile or other electronic means when there is confirmation of receipt by whatever means.

## Termination

43. Subject to the completion of any outstanding obligations, these arrangements may be terminated by either party giving not less than seven days written notice to the other party.

## Assignment

44. You must not assign this Agreement without prior written consent of **N.Z. Gold Merchants**. **N.Z. Gold Merchants** may assign this agreement without notice to you.

## Severance

45. If the whole or any part of a provision of this Agreement is or shall become void, unenforceable or illegal, the remainder of this Agreement shall have full force and effect. The parties agree that in such a case, the provision held void, unenforceable or illegal shall be replaced by such provision that in its commercial and legal context is most similar to the provision held void, unenforceable or illegal.

## Privacy

46. **N.Z. Gold Merchants** and entities controlled by it are subject to the Privacy Act 1993.
- a) Collection of Personal Information

We collect personal information (including your full name, address and contact details) so that we may administer our relationship with you, provide you with products and services you request, as well as information about **N.Z. Gold Merchants'** products and services.

Where it is necessary to do so, we also collect information on individuals such as company directors and officers (where the company is our client), as well as

client's agents and persons dealing with us on a "one off" basis. If you provide us with incomplete or inaccurate information, we may not be able to provide you with the products or services you are seeking.

b) Disclosure of Personal Information

We may communicate personal information to:

- i. Agents who refer business to us, and external product providers and
- ii. Organisations who we outsource certain functions.

In all circumstances where contractors and agents may become aware of personal information, confidentiality arrangements apply. Personal information may only be used by our agents and contractors for our purposes. We may be allowed or obliged to disclose information by law.

c) Access to Your Information

You are entitled to see and have corrected any information we hold about you, any transaction entered into by you with **N.Z. Gold Merchants**, and your **N.Z. Gold Merchant** accounts.

## Warranties

47. You acknowledge and agree that the representations and warranties given under this agreement shall be deemed to be repeated each time you enter into any service or transaction with us.