

GUIDELINES FOR METALS TRANSACTIONS

These Guidelines are intended as a reference to assist members in carrying out their business obligations in a manner consistent with accepted industry practices. While the Guidelines are not obligatory, it is suggested that potential problems and misunderstandings may often be avoided by following these recommended procedures, in conjunction with ISRI's scrap descriptions.

At times, the respective parties to a transaction may be unaware of the differences in trading practices of the other party. This diversity of interpretation often leads to misunderstandings, disputes, and in some instances expensive lawsuits. It is with the objective of providing members the means of avoiding such friction that ISRI has published these Guidelines, which are based on those practices most common and current in the industry.

On these points where it is impractical to provide recommendations, it is advised that the points be mutually agreed upon by the parties involved.

PART I

GUIDELINES FOR CONTRACTS

A contract is an agreement between two or more parties to perform a legally enforceable act.

Therefore, all contracts should be in writing and set forth in specific terms. Before signing a contract, one should carefully read and understand all terms of it. No discrepancies or ambiguities should exist at the time the contract is executed. If you receive a contract with terms that are objectionable, you should immediately notify the other party in writing of your objections. An attorney should be consulted when legal advice is needed.

It should be kept in mind that if a dispute arises under a contract, and a court is called in to interpret its terms, certain general rules will be applied. First of all, contracts will be construed as a "whole," and specific clauses will be subordinated to the contract's general intent. Secondly, courts will construe words according to their "ordinary" meaning unless it is clearly shown that they were meant to be used in a technical sense. Also, where provisions appear to be inconsistent, the courts will determine whether some of the provisions are printed (indicating a form contract), as compared to others which are written or typed. The latter kinds of provisions will prevail.

It should be remembered that where you and a buyer (or seller) have reached verbal agreement on a transaction, your failure to sign and return a contract which is sent to you in confirmation of that verbal agreement may not relieve you of the obligations of the terms and conditions enumerated in that contract.

This Guideline was developed to cover routine transactions. It is essential that any unusual arrangements must be completely spelled out in a contract. With these factors in mind, the following list of items is enumerated as a Checklist for you to follow, either in the construction of a contract, or for the review of another party's contract proposal. We cannot overemphasize the need for accuracy and specificity.

Checklist Items

(Be specific at all times)

I. Parties to Agreement:

Indicate full name and address of buyer and seller.
Include name of individual person or persons involved.
Buyer's and seller's signatures are fundamental.

II. Date of Contract:

- (a) Give date the initial agreement was reached
- (b) Give Contract Number.

III. Description of Material:

Use NF code names or clearly describe what is being traded. Any allowable quality variation to be so stated. Ex: "X percent moisture allowed" or "Minimum CU content to be X percent" or "X percent Painted Material allowed."

IV. Quantity:

State exact quantity expected and indicate allowable tolerances or minimum/maximum limitations Ex. "40,000 lbs. (5% More/Less allowed)" or "38,000 to 42,000 lbs."

V. Packing:

State type of packing allowable and restrictions if such are required. Ex: "Bales not to exceed 60 inches"; "Bales not to exceed 3,500 lbs."

VI. Delivery:

Show complete address of shipping or delivery point, including where applicable, specific rail siding or junction, forwarding warehouse, and party to be notified. Ex: "FOB (Actual Point of Shipment) Chicago, Ill."; "FOB (Actual Point of Delivery) St. Louis, Mo."; "FAS Baltimore Container Yard"; "C & F Tokyo, Japan." If these details cannot be furnished at the time of writing of contract, it should state "shipping/delivery instructions to follow." State means of conveyance to be employed. State size and type of truck, rail car, container or number of shipments expected or permitted.

VII. Shipment:

Time allowed for shipment or delivery should be clearly stated. Ex: "Shipment by Jan. 15, 1989 LATEST"; or "delivery by Jan. 15, 1989." Indicate at whose option, buyer's or seller's, shipment shall be made in time period stated.

VIII. Price:

State price per unit. Ex: "\$20.00/CWT"; "20.00 Cents/ Pound"; "\$400.00/Net Ton"; "\$440.92/Metric Ton." and indicate where appropriate "Clean and Dry"; "Full Copper Content." If applicable, state exact processing, smelting, refining charge, or unit deductions for impurities. (Avoid the use of the word "penalties.")

IX. Payment:

Terms of payment should be explicit. Ex: "Net 30 days after shipment"; "Net 15 days after mill receipt." Avoid phrases such as "usual." "Net 30." "Net Cash." Documents required to effect payment to be clearly stated. Ex: "Bill of Lading. Invoice. Weight Certificate." State how payment shall be made. If there is discussion of compensation for delayed payments, it should be included in the contract. If Letter of Credit is called for as a means of payment, it would be advisable that the terms to be included in the Letter of Credit also be stated in the

contract. When applicable, contract should state whether buyer or seller is responsible for payment of taxes, duties, or any other levies to which a shipment could be subjected. Contract should state whether the seller's or buyer's weights shall govern the basis of settlement.

x. Assignment:

The contract may state whether the buyer and/or the seller has the right to assign the contract. If it does, it should emphasize that the obligation arising under the contract shall be equally binding on his assignee.

XI. Notice:

The seller should specify how notice to be given under the contract should be received—i.e. by hand, by telegram, by certified or registered mail. One should also specify when notice is deemed to be received by the party to whom it is given.

XII. Disclaimer of Warranties:

Depending on the type of transaction, or the metal involved, the seller may want to limit his liability by disclaiming any warranties of merchantability or of fitness for a particular purpose.

XIII. Default:

The contract should contain a provision setting forth the events which would result in a default of the contract. This provision might also contain a clause stipulating damages and/or setting forth available remedies (i.e. specific performance) in the event a default does, in fact, occur.

XIV. Force Majeure:

This item is related to the item of default, as indicated in paragraph XIII. Seller or buyer may enumerate, either generally or specifically, what events (i.e. strikes, fires, accidents) constitute circumstances beyond its control and thereby absolve him of any liability for damages or delay.

XV. Non-Waiver:

The seller or buyer should state in the contract that his failure to insist upon strict performance in any given instance shall not be construed as a waiver or relinquishment for the future of any of the terms, covenants and conditions contained therein.

XVI. Claims:

The seller may specify that any claims involved in a metals transaction for contaminated materials, weight shortage, or for any other cause is waived by the buyer unless brought to the seller's attention within a certain number of days after delivery.

XVII. Arbitration and Applicable Law:

The contract should set forth which state's or country's law will apply in the event of a legal dispute under the contract. It should also provide for arbitration procedure. (If SRI Arbitration is desired, the contract should so stipulate.)

XVIII. Benefit:

The contract should stipulate on whom it is binding. For instance, the seller or buyer may want to specify that the contract inures to the benefit of the parties, their legal representatives, successors and assigns.

XIX. Entire Agreement:

This provision is especially important in the area of metals transactions, which frequently involve extensive preliminary negotiations. A clause may be inserted into the contract stating that the contract constitutes the

parties' entire agreement and supersedes all prior agreements and understandings with respect to the subject matter of the contract.

XX. Modification:

A clause may be included in the contract stating that the contract's requirements can only be modified by a written instrument signed by the parties or their respective agents. This insures that the parties' informal discussions will not later be construed as effecting an alteration of the contract.

PART II

PACKING, WEIGHING, SHIPPING AND RECEIVING

It is recommended that strict adherence to contract terms will minimize many of the potential problems in this area. If there is a question about any item, one should communicate with his buyer/seller and clarify the situation prior to shipping. Listed below are some specific guidelines to be used in avoiding the most frequently reported problems.

PACKING (ALL SHIPMENTS)

Seller's Responsibility:

- a. Pack in the manner and form agreed. Example: In sound bales, briquettes, boxes, pallets, drums, loose, etc.
- b. Be sure that buyer agrees with your definition of words and phrases, i.e. Bale, Briquette, Coil, etc. as well as allowed dimensions and weights of such.
- c. Material and packages should be securely tied or supported so that packages will hold in transit and normal handling.

Buyer's Responsibility:

- a. Advise seller of any specific prohibitions, i.e. type or method of packing, size or weight of pieces, units or packages, etc.
- b. Be sure that seller agrees with your definition of words and phrases, i.e. Bale, Briquette, Coil, etc., as well as allowed dimensions and weights of such.

WEIGHING, SHIPPING AND RECEIVING (TRUCK SHIPMENT)

Seller's Responsibility:

- a. Each package should be individually weighed and the entire truckload should be checkweighed for comparison. Reconcile or explain any differences. If truck is weighed during inclement weather or wind, make note of this on weight ticket.
- b. Trailers should be drop-weighed (both empty and loaded).
- c. All equipment should be inspected before loading, and cleaned or repaired where necessary to avoid loss or spillage.
- d. Open top trucks or trailers should be tarped or covered.

- e. vans and closed trailers should be sealed and seal numbers indicated on all documents.
- f. If your customer requires appointments, make one in advance. Otherwise, as a courtesy, advise the buyer of your anticipated delivery schedules.
- g. A complete manifest and packing list should accompany each shipment. This should clearly indicate the order number, items shipped, number and type of packages of each commodity, as well as the gross, tare and net weights of each package. This detailed information should be put into an envelope and attached to the inside wall of the truck or van. If this cannot be done, give a complete set of papers to the driver to deliver with the original Bill of Lading covering the shipment. At the very least, notify buyer by telephone, telex or wire of these details on the day shipment leaves.
- h. Different lots should always be properly segregated and bulkheaded to avoid comingling. Each package should be tagged or marked to aid in proper identification and segregation at the receiving point.
- i. Be aware that someone at the delivery point will have to unload the shipment. Pay particular attention to door areas to assure that material is loaded safely. Proper care should be taken to insure that the material can be unloaded in a safe and expedient manner.

Buyer's Responsibility:

- a. If seller requires appointment prior to pickup, make one in advance. Otherwise, as a courtesy, advise the seller of your anticipated pickup schedule.
- b. Trailers should be drop-weighed (both empty and loaded).
- c. Carefully check shipment advices and compare package count, seal numbers, weights.
- d. Prior to unloading, if a significant" weight difference is apparent, the seller should be notified promptly and if requested, another weight should be taken to determine if spillage or theft might have occurred.
- e. After unloading, promptly advise seller of any significant" differences between advised and actual weights, segregation, classification or quality. (Note: Refer to Part IV of the circular for recommended procedures in handling quality problems.)
- f. Truck or trailer should be completely unloaded including any spilled material which should be picked up, weighed and identified as spilled from original containers. Buyers should cooperate in every way to help minimize losses.

WEIGHING, SHIPPING AND RECEIVING (RAIL SHIPMENT)

Seller's Responsibility:

- a. Each package should be individually weighed and the entire rail car should be checkweighed for comparison. Reconcile or explain any differences. If rail car is weighed during inclement weather or wind, make note of this on weight ticket.
- b. Railroad cars should be uncoupled and at rest (if possible) before weighing.
- c. All equipment should be inspected before loading, and cleaned or repaired where necessary to avoid loss or spillage.
- d. Railroad cars should be sealed and seal numbers indicated on all documents.
- e. A complete manifest and packing list should accompany each shipment. This should clearly indicate the order number, items shipped, number and type of packages of each commodity, as well as the gross, tare and net weights of each package. This detailed information should be put into an envelope and attached to the inside wall of the railroad car. If this cannot be done, mail a complete set of papers to the buyer on the day shipment leaves.
- f. Different lots should always be properly segregated and bulkheaded to avoid comingling. Each package should be tagged or marked to aid in proper identification and segregation at the receiving point.

g. Be aware that someone at the delivery point will have to unload the shipment. Pay particular attention to door areas to assure that material can be unloaded in a safe and expedient manner.

Buyer's Responsibility:

- a. Railroad cars should be uncoupled and at rest (if possible) before weighing.
- b. Carefully check shipment advices and compare package count, seal numbers, weights.
- c. Prior to unloading, if a significant" weight difference is apparent, the seller should be notified promptly and if requested, another weight should be taken to determine if spillage or theft might have occurred.
- d. After unloading, promptly advise seller of any significant" differences between advised and actual weights, segregation, classification or quality. (Note: Refer to Part IV of the circular for recommended procedures in handling quality problems.)
- e. Rail car should be completely unloaded including any spilled material which should be picked up, weighed and identified as spilled from original containers. Buyer should cooperate in every way to help minimize losses.

WEIGHING, SHIPPING AND RECEIVING

(EXPORT/IMPORT SHIPMENT)

Seller's Responsibility:

- a. Each package should be individually weighed and the entire container load should be check-weighed for comparison. If container is weighed during inclement weather or wind, make note of this on weight ticket.
- b. Container and chassis should be drop-weighed, if possible, both empty and loaded.
- c. Prepare and send to buyer a complete manifest and packing list indicating the order number, items shipped, number and type of packages of each commodity, as well as the gross, tare and net weights of each package and the seal numbers.
- d. If shipment is against a Letter of Credit, pay strict attention to all terms.
- e. Place seals on all container doors and indicate seal numbers on documentation.
- f. Material and packages should be properly stowed and braced to prevent movement during shipment.
- g. Be aware that someone at the delivery point will have to unload the shipment. Pay particular attention to door areas to assure that material is loaded safely. Proper care should be taken to insure that the material can be unloaded in a safe and expedient manner.

Buyer's Responsibility:

- a. Container and chassis should be drop-weighed, if possible, both empty and loaded.
- b. Carefully check shipment advices and compare package count, seal numbers, weights.
- c. Prior to unloading, if a significant" weight difference is apparent, the seller should be notified promptly and if requested, another weight should

be taken to determine if spillage or theft might have occurred. Seller should be given opportunity to appoint surveyor or representative to verify weights.

- d. After unloading, promptly advise seller of any significant" differences between advised and actual weights, segregation, classification or quality. (Note: Refer to Part IV of the circular for recommended procedures in handling quality problems.)
- e. Container should be completely unloaded including any spilled material which should be picked up, weighed and identified as spilled from original containers. Buyer should cooperate in every way to help minimize losses.

“For purposes of this section, the meaning of the word “significant shall be determined by agreement between buyer and seller, depending on the commodities and their values.

PART III

TRANSPORTATION GUIDE

The mode and type of conveyance should be specified in the contract. If it has not been, then it is important that buyer and seller agree upon the mode and type to be used. These guidelines will assist in determining the appropriate means of transportation to employ.

- A. Mode—Truck/Trailer
 - 1. Type:
 - a. Dump
 - b. Removable sides
 - c. Van—open or closed
 - d. Dimensions of unit (20 ft., 40 ft., etc.)
 - e. Determine if truck/trailer capacity meets minimum weight specified on contract.
- B. Mode—Rail Car
 - 1. Type:
 - a. Box car or gondola
 - b. Size of door opening, i.e. single or double door
 - c. Special type D.F., Hi Cube, etc.
 - d. Dimensions of car (40 ft., 50 ft., 60 ft., etc.)
 - e. Determine if rail car capacity meets minimum weight specified on contract.
- C. Export Shipments
 - 1. Container:
 - a. Type of container, i.e. closed, open-top, flat rack, hi-cube, etc.
 - b. Size of container (20 ft., 35 ft., 40 ft., 45 ft., etc.)
 - c. Determine if container capacity meets minimum weight specified on contract.

2. Breakbulk

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PART IV

REJECTIONS—DOWNGRADES—CLAIMS

A brief explanation of these items will help one understand and implement the procedures recommended in this section.

Rejections: Rejections can occur when a buyer refuses to accept a shipment of material that does not conform to the description specified in the contract. Usually in such cases, the buyer cannot utilize the material and the seller is asked to remove the material from the buyer's place of delivery. A rejection can occur prior to unloading, but often the cause of the problem cannot be determined until the material has been off loaded and graded. Any part, or all of the shipment, may be subject to rejection.

Downgrades: Downgrades can occur when all, or part, of the material in a shipment is not in conformity with the description specified in the contract. Often, in such cases, the buyer can utilize the material and is willing to accept delivery of the material, subject to a price commensurate with its value.

Claims: This term is used mostly in export-import movements, and is used generically to encompass both rejections and downgrades, as well as weight shortages.

Strict adherence to contract terms can minimize the common causes of these difficulties. However, if a problem arises, it should be given prompt attention and settlement should be attempted as quickly as is practical. It is essential that both parties cooperate and keep communications open to minimize expenses and to preserve the relationship. Negotiations should not be conflicting but mutually beneficial and fair. Listed below are some recommended steps to be taken when a problem arises.

DOMESTIC SHIPMENTS

Buyer's Responsibilities:

- a. In the event of a rejection buyer must notify seller immediately by telephone or telex. If seller fails to respond within two business days, buyer may return material in most prudent manner. Subject to contract provisions, buyer should promptly advise seller concerning replacement of rejected material.
- b. In the event of a downgrade buyer must notify seller immediately by telephone or telex and afford seller an opportunity to inspect the material prior to its use. If material is to be inspected by seller or his representative, buyer should agree to a mutually convenient time to do so.
- c. Buyer must give seller option of removing material if he does not agree to downgrade. (All costs of unloading and reloading are for seller's account.)

Seller's Responsibilities:

- a. In the event of a rejection seller should respond promptly and advise buyer of his intentions. Seller must reply within two business days. Subject to contract provisions, he must advise buyer promptly concerning replacement of rejected material.
- b. In the event of an unacceptable downgrade seller must advise buyer within two business days if he wishes to inspect material and agree upon a mutually convenient time to do so.

c. If seller wishes to remove downgraded material from buyer's delivery point, he must advise buyer promptly. (All costs of unloading and reloading are for seller's account.)

EXPORT-IMPORT SHIPMENTS

Buyer's Responsibility:

a. In the event of a claim, time is of the essence and notification should be given to seller within a reasonable period of time after arrival of vessel in receiving port.

b. In the event of a claim, the material should be held intact until agreement has been reached. The acceptable portion of the material may be consumed and/or arrangements may be made to sample a portion of material, i.e., 10--25% with balance held intact pending resolution of claim.

Seller's Responsibility:

a. In the event of a claim, seller should respond to buyer's notification promptly by telephone, telex, wire, or cable.

b. When a claim settlement has been agreed upon, terms of settlement must be followed promptly.