

Agreement #:  
Seller's Code :  
Buyer's Code :

**SALE AND PURCHASE AGREEMENT**  
**SAMPLE OF DRAFT CONTRACT**

This Sale and Purchase Agreement for alluvial gold dust is made and entered into on this **day of** , 2010, by and between:

**Seller:** Undisclosed until Qualified Buyer Candidate submits completed CIS to the Seller Representative

**Seller Representative:**

**Name:** Get Out From Under, Inc  
**Telephone No:** 1-201-773-4971  
**E-mail:** [gofu@optonline.net](mailto:gofu@optonline.net) + [gofumail@yahoo.com](mailto:gofumail@yahoo.com)  
**Represented by:** Greg Quinones  
**Title:** CEO

and

**Name:**  
**Address:**

**Telephone No:**  
**Telefax No:**  
**E-mail:**  
**Represented by:**  
**Title:**

hereinafter referred to the "**Buyer**"

Both parties, companies, and their authorized representatives whose signatures appear herein, were all duly given full corporate authority by their respective company to enter into the present sale and purchase agreement (hereinafter "**SPA**"), and have duly complied with all the legal formalities and requirements of laws of their respective countries for this type of SPA, and further agree to be bound by the International Chamber of Commerce (ICC), Paris, and other internationally applicable commercial laws on matters related to contract dispute and resolution.

**WHEREAS;** above named parties through their respective signatories hereby desire to enter into and to execute the present SPA for Sale and Purchase of Gold Dust (hereinafter "**COMMODITY**") based on specific description, terms and conditions as set forth below.

**WHEREAS;** Seller, under full corporate authority and responsibility, declares that it has the capability and right to sell the **COMMODITY**.

**WHEREAS;** Buyer, under full corporate authority and responsibility, declares that it has the full capability to purchase the **COMMODITY** under the following terms and conditions.

**NOW THEREFORE:** in mutual consideration of the covenants of the parties and the terms and conditions herein contained, the parties agree as follows:

**1. COMMODITY SPECIFICATIONS & QUANTITY**

<b>A) COMMODITY:</b>	<b>Alluvial Gold/Aurum Utalium (AU)</b>
<b>B) FORM:</b>	<b>Alluvial Gold Dust</b>
<b>C) PURITY:</b>	<b>92% + (Ninety Two percent Plus)</b>
<b>D) FINENESS:</b>	<b>22+ Carats plus.</b>

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- E) ASSAY: Final assay to be made at the Buyer's designated refinery(ies); and, the result of value will be accepted by both Buyer and Seller.
- F) ORIGIN: Africa.
- G) PACKING: Export Package Boxes or any other suitable packaging commonly used in the trade.
- H) QUANTITY: A yearly total of 30 shipments of **50-400 kg per delivery with** 2-3 shipments each month for Twelve (12) months.
- I) TEST SHIPMENT: Buyer has the right to start with a test shipment of no less than 50kg as the first shipment. Buyer must issue a separate Letter of Credit to cover the test shipment.
- J) PRICE: Ten Percent (10%) Gross Discount of LBMA Gold Fixing PM (Second Fixing) on day of issuance of Final Assay Report by Buyer's Refinery.
- K) FEE: No fee paid to the Sell side.
- L) DELIVERY: CIF by Air.
- M) AGREEMENT DURATION: 12-months with possible extensions.
- N) SUBSEQUENT DELIVERIES: As per agreement between Seller and Buyer depending on availability.
- O) PRICE OF SUBSEQUENT DELIVERIES: As per agreement between Seller and Buyer.

## **2. OBLIGATIONS OF BUYER**

- 2.1 Buyer irrevocably undertakes that the COMMODITY remains the property of Seller's or Seller's Designated Entity until Seller has received full payment of the price quoted under Clause 3 of this SPA.
- 2.2 Buyer confirms to import the COMMODITY into its country under its trading license observing all legal regulations and to have the COMMODITY assayed at its expense by its Designated Refinery.
- 2.3 Buyer confirms that Seller and/or its Designated Person is entitled to witness customs clearance at the Port of Entry.
- 2.4 Buyer agrees to inform Seller continuously about the location of the COMMODITY and the state of its processing.
- 2.5 Buyer pays all costs, which arises after import to the point of delivery (insurance, customs, transport, refining, assaying, bank charges).
- 2.6 Buyer's Refinery(ies) must be acceptable to Seller in an acceptable location.

## **3. PRICE**

- 3.1 The price to be paid by the Buyer to the seller for the shipments will be ten percent (10%) discount to LBMA Gold Fixing PM.
- 3.2 LBMA price will be fixed at the day of Final Assay Report issued by the Buyer's Designated Refinery.
- 3.3 All funds stated herein shall be in United States Dollars unless otherwise negotiated.

## **4. DELIVERY TERMS**

- 4.1 The delivery for this Agreement shall be on a CIF basis (by air-cargo) to nearest major airport in the country of Buyer's designated refinery (to refinery of Buyer's choice).
- 4.2 Seller will pay all taxes, duties, levies and other costs, required in the country of origin. The Seller will be responsible to pay all cost of transport to the Buyer's Country.

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- 4.3 Buyer will pay all taxes and fees including transportation of the COMMODITY from the airport/customs to the Buyer's refinery as required in the country of import.
- 4.4 Buyer will pay all required charges at the refinery. The COMMODITY will be deposited into the account of the Seller or Seller's Designated Entity at the refinery (consigned to the Buyer's Refinery) and, once the COMMODITY has been assayed, the Seller will sell the COMMODITY at the agreed price to the Buyer per this SPA. The Seller will be notified by the Buyer's Refinery and copied to Buyer via fax or e-mail of the date on which the COMMODITY has been assayed.
- 4.5 Seller will notify the Buyer via fax or e-mail of the date of transport of the COMMODITY from Seller's Departure Point (Origin). In the same manner, Buyer will confirm receipt of Seller's Notice, which will include airway bill and export documents.
- 4.6 During the first shipment of COMMODITY, Seller may be physically present at Customs and at the refinery to insure all procedures have been followed and delivery was completed.
- 4.7 The herein specified commodity is packed in boxes (smelter/assayer's standard) each containing 10 kilograms (or more if accepted by Buyer) of COMMODITY described in this SPA. The box is packed on pallet of normal Euro size, at Ten (10) boxes per pallet.
- 4.8 Buyer has the option to send One (1) representative to inspect the herein mentioned transaction carried-out under this SPA.

#### **5. DELIVERY DOCUMENTS**

Each shipment and delivery shall be identified with all appropriate contract reference codes and numbers and a label has to be put on the boxes of the COMMODITY. The Seller will provide the following documents to the Buyer for each shipment.

1. Commercial Invoice
2. Certificate of Origin (if applicable)
3. Certificate of Ownership
4. Declaration that the product is free and clear and of non-criminal origin, unencumbered and free of any liens, transferable and exportable. (Certificate of Movement).
5. Packing List.
6. Export Permit.
7. Full set Original Airway bill, market "Air Freight Pre-Paid" and showing the Gross and Net weight.
8. Original Assay Report issued in Country of Origin.

#### **6. PAYMENT TERMS**

- 6.1 Payment for the COMMODITY shall be made by SWIFT Wire Transfer to the Seller's Designated Bank. Proof of the SWIFT must be received within Four (4) banking days after the Buyer's Refinery issues its Assay Report.
- 6.2 Payment will be secured by a Documentary Letter of Credit issued by the Buyer's Bank to the Seller's Designated Bank Account.
- 6.3 Documents required for payment will be as follows:
  1. Commercial Invoice. Issued by Seller in conformity with the Final Assay Report. Two (2) Originals and Two (2) Copies.
  2. Airway Bill. One (1) original and Three (3) Copies.
  3. Final Assay Report. One (1) Original and Three (3) Copies issued by Buyer's Refinery.

Note: Documents required for payment will only be listed in this SPA. No references are acceptable to be inserted into the Commercial Letter of Credit.

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## **7. BANKING COORDINATES**

### **Banking Details for the Seller**

Bank Name:  
Bank Address:

Account Name:  
Account Number:  
SWIFT Code:

Note: Seller has the right to change its bank with advance notice to the Buyer. Seller may use its affiliated companies' bank accounts.

### **Banking Details for the Buyer**

Bank Name:  
Bank Address:

Bank Officer & Title:  
Telephone No:  
Telefax No:  
Account Name:  
Account Number:  
SWIFT Code:

Note: The account must be on Buyer's name.

## **8. PROCEDURES**

- 8.1 Buyer and Seller execute the Sale and Purchase Agreement (SPA) via fax or email and hard copy by mail. Buyer will provide corporate registration documents as well as passport copy of the signatory and a letter about business activities. Please note that this SPA contract is subject to the results of Compliance of the (Seller's) bank and Seller may require more documents from Buyer, including but not limited to "Letter of Good Standing" from Buyer's Bank.
- 8.2 Buyer will advise Seller about the Refinery(ies) details with authorized persons, full address and phone numbers within One (1) Business Day after signing the SPA. Seller has the right to refuse the Refinery(ies) at its discretion. Buyer will have to provide an acceptable refinery(ies) to Seller.
- 8.3 Buyer will advise Seller about the verbiage of the Commercial Letter of Credit which will be irrevocable within Three (3) Banking days after signing the SPA. The Letter of Credit will be issued by an "acceptable bank in an acceptable location" to Seller and will cover 12 of the 30 deliveries (Revolving Letter of Credit). The Letter of Credit cannot have more than One (1) beneficiary. In case of a transferred Letter of Credit or Two (2) beneficiary, Seller has the right to refuse the transaction and to terminate this SPA.
- 8.4 Within Seven (7) after signing the SPA, the Buyer's Bank then opens the Commercial Letter of Credit to the Seller's Bank via SWIFT.
- 8.5 All bank charges in the Buyer's Bank are for the Buyer's account. Bank charges in the Seller's Bank are for the account of the Seller.
- 8.6 Spelling and typographical errors and differences of such nature between bank issued and beneficiary issued documents shall not be deemed discrepancies provided that the intent of the writer is clear from the context and in such case only UCP600 regulations shall apply at any time.
- 8.7 Delivery and shipment commences as per this SPA and the Letter of Credit.

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- 8.8 The COMMODITY will be delivered to Buyer's designated destination, CIF (by the Seller).
- 8.9 The Buyer and the Seller and/or Seller's Designated Person will supervise the clearing of the Goods at Customs and the delivery to the refinery of the Buyer.
- 8.10 Custody and control of the COMMODITY is taken over by the Buyer's Refinery. Buyer's Refinery issues Safe Keeping Receipt as per and sends it to the Seller.
- 8.11 Buyer's Refinery sends the Final Assay Report certifying quantity and purity of the COMMODITY delivered by e-mail to both Seller and Buyer within Two (2) - Four (4) Banking days after the delivery.
- 8.12 After final and acceptable assay at Buyer's refinery as per the contract agreement for purity confirmation, the Buyer automatically acquires title of the confirmed commodity. The Buyer must swift payment for the COMMODITY within four (4) Banking days. The Letter of Credit will NOT be drawn upon unless the Buyer fails to provide documentary evidence of the SWIFT Wire Payment in accordance with this SPA.

## **9. TITLE OF GOODS**

The Title of the COMMODITY shall pass from the Seller or Seller's Designated Entity to the Buyer once the final and acceptable assay.

## **10. TAXES AND INSTITUTIONAL COSTS**

The parties hereto individually and separately accept that all liabilities for taxes, levies, duties, charges and any institutional costs applicable in the execution their respective rules and regulations will be covered by respective parties. In the event it occurs, the parties hereto shall only be responsible for those commissions and fees that they in writing have agreed to pay. Each party shall indemnify and hold the other party harmless against any third party claims or other forms of payment demands of above-mentioned nature.

## **11. NON-CIRCUMVENTION AND NON-DISCLOSURE**

The Buyer (including any Affiliates, Representatives, Brokers, Agents, Associates or retained Legal Counsel) agree to protect this SPA, Information and to prevent its duplication or disclosure.

The parties hereto agree to respect each other's proprietary interests and not to reveal details and/or information to the other Party and/or individuals other than those who are the officers and/or retained legal counsel involved in handling this transaction. Except without the written consent of the other Party, no communication is to be made by one Party to other Party's bank, its handling officer(s) and/or manager(s).

In the event that this transaction will not materialize, concluded or just reaches the stage where the Parties are able to know the particulars and material information or coordinates of each other, the Parties (including any Affiliates, Representatives, Brokers, Agents, Associates or retained Legal Counsel) are prohibited to use and utilize those information or coordinates for purposes of contacting directly the other Party herein to continue the failed transaction or similar arrangements involving the same commodity or any other dealings.

Such prohibition will be in force and effect for a period of Five (5) years from the date of execution hereof.

## **12. FORCE MAJEURE**

The parties hereto shall not be liable for any failure to perform in the event of force majeure clauses as stated in the Standards/Publications of the International Chamber of Commerce (ICC), Paris.

## **13. ARBITRATION**

In the event of dispute involving to or related to any portion of this SPA and the same cannot be resolved in an amicable way, each party of this SPA shall have the right to take the proper legal recourse and shall be bound by the arbitration procedures of the International Chamber of Commerce in accordance with its rules for a pre-arbitral referee procedure with venue of any Arbitration in \_\_\_\_\_.

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All disputes and settlement arising out of or in connection with the present SPA shall be governed, settled by one or more arbitrators that will be appointed or designated in accordance with the above-mentioned rules of arbitration.

#### **14. APPLICABLE LAW**

If any action or proceedings to enforce the arbitral award of the arbitration has failed, the USA Law shall apply and venue of action shall be in \_\_\_\_\_.

#### **15. SPECIAL PROVISIONS**

- 15.1 Seller has the right to assign this SPA in whole or in part.
- 15.2 Nothing contained in this SPA shall be construed or have an effect as constituting any partnership between the parties of this SPA.
- 15.3 The Buyer agrees that the Seller can send representative(s) to accompany the COMMODITY at all times (except closing time of the refinery), until the ownership of the COMMODITY is transferred to the Buyer. The Seller will instruct his representative(s) to authorize the opening of the crates, in the presence of a customs official and a Buyer's representative, at the destination airport, for verification purposes.
- 15.4 This SPA contains the full SPA and entire understanding of the parties herein with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings of parties with respect to the same subject of this SPA. No changes, alterations or substitutions shall be permitted unless the same shall be notified in writing and signed by both parties.
- 15.5 This SPA shall be accepted to be legal and binding by both parties if executed and sent by fax and/or E-Mail direct to the parties concerned at the numbers contained within this SPA.
- 15.6 This SPA is fulfilled electronically, signed digitally and is serving as original whereupon it remains binding upon the parties hereto, their assigns and successors and is signed with full authority to act.

#### **16. EXECUTION OF THIS AGREEMENT**

The terms of this SPA shall be confirmed and signed by the Buyer and the Seller via facsimile or Email. Said executed facsimile or email shall be binding and initiates and concludes the legal liabilities between Buyer and Seller of this SPA. **If this SPA is not signed within Five (5) Business Days after the date of issue, it will be "null and void".**

By signing below, both parties abide by their corporate and legal responsibility, and execute this SPA under full penalty of Perjury.

Signed and sealed, this \_\_\_ day \_\_\_\_\_, 2010.

**See Signature Page**

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**SIGNATURE PAGE**

**SELLER:**

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**Name:**  
**Title:**  
**Passport No:**  
**Country of Issue:**  
**Seal:**

**BUYER:**

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**Name:**  
**Title:**  
**Passport No:**  
**Country of Issue:**  
**Seal:**

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**Seller's Initials**

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**Buyer's Initials**