

# General Conditions of Sale, Delivery and Payment

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Notes on article invoice no. 999910

Many thanks for your order given to us overleaf. As you will be aware from studies you have carried out in your own business, no matter how efficiently we work, it is impossible to cover our overheads on orders worth less than EUR 200.00. The only way we can afford to do this is if we receive enough large orders to cover our losses. As a distributor, we supply every order from products we have in stock. Please understand that it is necessary for us to charge a proportion of processing costs and shipping costs. If you intend to increase the amount of business you do with us, please call our office manager in charge of your marketing area.

### 1. Scope

We supply buyers exclusively on the basis of the following general conditions of sale, delivery and payment. General terms and conditions of business of the buyer that differ from our general conditions of sale, delivery and payment shall not apply.

### 2. Entering into a contract / special costs for noble metals

2.1 Offers made by the seller are non-binding and subject to confirmation.

2.2 The buyer agrees to accept such deviations in quality, amount, weight or in other respects as are customary in trade or commerce, even when the buyer refers to brochures, drawings or illustrations when placing its order, except where the buyer expressly states that exact compliance with the terms of the order is a condition of the contract.

2.3 Special costs for noble metals calculated by the manufacturer shall be borne by the buyer.

### 3. Performance of contract by subsidiaries / associated enterprises

3.1 The seller may permit enterprises associated with the seller to enter into the contract with the buyer in place of the seller. If an associated enterprise enters into the contract with the buyer, the general conditions of sale, delivery and payment shall continue to apply to the contract in full.

### 4. Date of delivery / reservation of right to deliver / allocation of resources / seller's default

4.1 Delivery dates are stated in the confirmation of order according to the best of the seller's knowledge and as precisely as possible. The delivery period begins upon the buyer's receipt of the confirmation of order, but not before the seller has received the materials, permits and releases to be supplied by the buyer nor before the receipt of an agreed payment on account. Partial deliveries shall be permissible to the extent that the buyer can reasonably be expected to accept them.

4.2 If the failure to comply with the time limits is to be attributed to allocation of resources or force major, e.g. mobilization, war, insurrection, or similar events, e.g. strike, lockout, the periods of time shall be reasonably extended.

4.3 If, despite entering into a correct covering transaction with its supplier, the seller is not supplied with the goods ordered by the buyer either in good time or correctly, and the seller is not responsible for the failure to deliver to the seller in good time or correctly, the seller shall be entitled to rescind the contract with the buyer. Notice shall be given to the buyer of the failure to deliver in good time or correctly. If the seller does not rescind the contract, the seller shall for the duration of the delivery to the seller that is not in good time or not correct be released from its duty to perform.

### 5. Prices

5.1 The prices stated are net prices and apply to deliveries ex works less packaging. No cash discounts will be granted if the buyer is in arrears with the payment for earlier deliveries.

5.2 If more than four weeks pass between the date when the contract is entered into and the contractually agreed delivery date, the seller shall be entitled to charge the buyer the list price of the goods that applies at the date of shipping.

5.3 If the purchase price is in foreign currency, the buyer shall bear the risk of a deterioration of the exchange rate of the foreign currency against the euro for the period from the date on which the contract is entered into until the date when the seller receives the payment.

### 6. Payment, set-off and right to refuse performance

6.1 Payment shall be due immediately without discounts of any kind, unless the confirmation of offer provides otherwise. COD consignments are payable without any deduction. Employees and travelling agents of the seller shall be entitled to receive payment only if they have been given authority to collect.

6.2 Bills of exchange or cheques are accepted only as conditional payment, never in lieu of payment. When the bill of exchange or cheque is negotiated, the title to the bill or cheque passes to the seller.

6.3 If payments are made later than as provided in no. 6.1, interest at a rate of 5% above the base rate shall be payable from the date when they fall due to the date of payment, without a demand being necessary. If the buyer is in default, interest at the rate of 8% above the base rate shall be payable until the date of payment. The buyer shall be entitled to furnish evidence that the actual loss or damage was lower.

6.4 If the financial situation of the buyer materially deteriorates after the contract is entered into, for example if insolvency proceedings are commenced in relation to the buyer's property, or if such a deterioration in the buyer's financial situation becomes known only after the contract has been entered into, the seller shall not be obliged to make delivery until the buyer pays or provides an adequate security for the seller's payment claim.

6.5 The buyer shall be entitled to set off payment only against undisputed claims or claims that have been finally and non-appealably determined or with the seller's consent in writing, and only in such cases shall the buyer be entitled to exercise a right of retention. The commercial right of retention under s. 369 Commercial Code (commercial lien between merchants) is excluded.

### 7. Defects as to quality

The seller shall be liable for quality defects as follows:

7.1 All the parts or services shall, at the choice of the seller, be remedied, replaced or rendered again if within the limitation period they show a defect of quality, provided that the cause of the defect existed at the date of passing of risk. First, the seller shall be given an opportunity to make supplementary performance.

7.2 Warranty claims shall become statute-barred in twelve months. This shall not apply to the extent that, under sections 438 (1) no. 2 (buildings and things for buildings), 479 (1) (right of recourse) and 634a (1) no. 2 (building defects) Civil Code, statute does not lay down longer periods, and in cases of death or injury to body or health, of an intentional or grossly negligent breach of duty by the seller and fraudulent concealment of a defect. The statutory provisions on suspension of expiration of the limitation period, suspension and recommencement of the limitation period shall remain unaffected.

7.3 Notice in writing, in the case of any defects in the products supplied, shall be made immediately after delivery, but in the case of hidden defects immediately after the defect is discovered.

7.4 If the supplementary performance fails, the seller - without prejudice to any damages claims under no. 9 - may terminate the contract or reduce the payment.

7.5 Claims of the seller for the expenses incurred for the purpose of supplementary performance, in particular carriage of goods, workmen's travel costs, costs of labour and materials, are excluded to the extent that the expenses are increased because the delivery item has subsequently been taken to a different location than the buyer's premises, unless the transport to that location is in accordance with the intended use of the item.

7.6 Rights of recourse of the buyer against the seller under s. 478 Civil Code (businessperson's right of recourse) shall exist only to the extent that the buyer has not entered into any agreements with its customer that go beyond the statutory warranty claims. The scope of the buyer's right of recourse against the seller under s. 478 (2) Civil Code shall further be subject to no. 7.5 mutatis mutandis.

7.7 In other respects, claims to damages shall be subject to no. 9 (other claims to damages). Claims of the buyer against the seller and the seller's agents for whom it is vicariously liable going beyond this or other than those dealt with by no. 9 shall be excluded.

### 8. Impossibility, adaptation of contract

8.1 To the extent that delivery is impossible, the buyer shall be entitled to claim damages, unless the seller is not responsible for the impossibility. However, the buyer's claim to damages shall be restricted to ten per cent of the value of the part of the delivery that, by reason of the impossibility, cannot be appropriately taken into operation. The above restriction shall not apply to the extent that, in cases of intention, gross negligence or death, or injury to body or health, liability is mandatory; this shall not entail a change of the burden of proof to the detriment of the buyer. The buyer's right to terminate the contract shall remain unaffected.

8.2 To the extent that unforeseeable events in the meaning of no. 4.2 materially alter the financial significance or the contents of the delivery or have a substantial effect on the seller's business operations, the contract shall be adapted to a reasonable degree, in accordance with good faith. To the extent that this cannot be financially justified, the seller shall have the right to terminate the contract. If it wishes to avail itself of this right of termination, it shall notify the buyer of this without delay after realizing the implications of the event, even if an extension of the delivery period has first been agreed with the buyer.

### 9. Other claims to damages

9.1 Buyer's claims to compensation and reimbursement (hereinafter: "claims to damages), on whatever legal basis, in particular for the breach of duties under the obligational relationship and in tort, are excluded.

9.2 This shall not apply if liability is mandatory, for example under the Product Liability Act (Produkthaftungsgesetz), in cases of intention, of gross negligence, or of death, or injury to body or health or the violation of fundamental contractual duties. The claim to damages for the violation of fundamental contractual duties shall, however, be restricted to damage that is typical of contracts and foreseeable, unless there is intention or gross negligence, or death or injury to body or health. The above provisions do not entail a reversal of the burden of proof to the detriment of the buyer.

9.3 To the extent that the buyer has claims to damages under this no. 9, these claims shall expire at the end of the period of limitation for defects of quality under no. 7.2. Claims to damages under the Product Liability Act shall be subject to the statutory provisions on limitation.

### 10. Retention of title

10.1 The seller shall retain title to all items delivered until the seller's claims arising from the business connection have been paid in full. This shall apply even if the buyer pays the purchase price of particular deliveries, for in this case the retained title to the goods secures the seller's claim for the balance. Processing or transformation of the goods shall always be deemed made for the seller.

10.2 If the title or co-title of the seller expires as a result of combination of the goods with other property, it is now agreed that the buyer's title or co-title to the combined property shall pass to the seller proportionately to the value of the buyer's share in the whole (value as per invoice). The buyer shall hold the seller's title or co-title to the property for the seller free of charge. Goods in which the seller has a title or co-title shall also be known as reserved goods. If property delivered by the seller becomes an integral part of other property as a result of combination, and the latter property is the main property under German law, the co-title to the main property shall pass to the seller in the same proportion as the proportion of the invoice value of the property delivered by the seller to the invoice value or, if no invoice value is available, to the current market value of the main property. Here too the buyer shall hold the seller's co-title free of charge.

10.3 Customers who are dealers may resell the reserved goods in the due course of business. If the buyer is in default of payment, the seller may revoke the authority to resell.

10.4 The buyer hereby by way of security transfers to the seller in full as of today's date the claims arising from the resale or for another legal cause in relation to the reserved goods. If reserved goods are resold together with other goods at a total price, the assignment includes a part claim of first priority equivalent to the invoice value of the goods. The assignment of the claim also includes claims of the buyer to the final balance of a current account where such balance has been agreed between the buyer and its customers. On request, the buyer shall disclose the list of claims assigned and give all information that is requested relating to the claims assigned to the seller, and also produce the supporting documents.

10.5 If the buyer is not itself a dealer, the buyer shall not be entitled to resell before the seller's total claim arising from the business connection under no. 10.1 has been fully paid except with the written consent of the seller. No. 10.4 (assignment of claims in advance) shall apply mutatis mutandis.

10.6 On the buyer's default in payment or other substantial breaches of contract, the seller shall be entitled after fixing an appropriate time-limit to terminate the contract and to take back the goods. The buyer is under a duty in this case to assign to the seller claims against third parties for restitution of property. The buyer shall irrevocably authorize the seller to enter the buyer's premises where the reserved goods are stored in order to enable the seller to remove the goods or to inspect them.

10.7 If the value of the seller's security, including the assignment of future claims, continues for a period of time to exceed the value of the seller's claims by 20%, the seller shall be obliged at the request of the buyer to release to the buyer securities granted to the buyer, such securities to be at the choice of the buyer, until the value of the remaining securities exceeds the value of the seller's claims by less than 20%. The reference figure for calculating the value of the security shall be the seller's current sales price, less 10% if the goods are no longer new.

10.8 The buyer shall not be permitted without the seller's consent in writing to pledge the reserved goods or to transfer ownership of the reserved goods by way of security.

### 11. Export

The seller points out that goods that are marked with a dual-use number are subject to export control. Their export is permissible only with the approval of the competent European authorities, the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle), Eschborn/Taunus and the Bureau of Export Administration, Washington. In addition, on the export of all goods, account must be taken of the national export control provisions and international embargo provisions. The seller points out that a violation of these provisions constitutes a criminal offence.

### 12. Governing law and place of jurisdiction

12.1 This contract shall be governed exclusively by the law of the Federal Republic of Germany. The application of the Uniform Law on the International Sales of Goods (ULIS) and the United Nations Convention on Contracts for the International Sales of Goods (CISG) are excluded. The place of jurisdiction for all litigation arising from this contract is Düsseldorf. The agreement as to a place of jurisdiction applies between businessmen governed by the Commercial Code.

12.2 If the contract of sale is entered into and carried out in the course of trade inside the EC and if the buyer does not give the seller its VAT registration number, the seller shall be entitled to charge the appropriate German VAT in addition to the agreed purchase price and to require it to be paid

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