

**1. Scope:**

1.1 All deliveries, services and sales transactions concluded between the Customer and Agosi AG, Kanzlerstrasse 17, 75175 Pforzheim ("Agosi") are carried out solely on the basis of the General Terms and Conditions printed below. Any inconsistent, diverging or additional terms and conditions of the Customer shall not apply even if they are incorporated in a purchase order ("order") following Agosi's offer and Agosi does not expressly object to these or Agosi executes the order without reservation. Agosi's silence signifies Agosi's rejection of the Customer's terms and conditions.

1.2 If Agosi operates separate weight accounts for customers in respect of each metal or precious metal, then the "General Terms for Weight Accounts for Metals and Precious Metals" in the latest valid version shall take precedence. If Agosi concludes purchase contracts with consumers via its online shop, then the "Agosi Online Shop Standard Terms and Conditions" shall apply.

1.3 All Agosi's general terms and conditions can be downloaded at any time from <http://www.agosi.de/download>.

**2. Offer and contract:**

Agosi's offers are subject to change without notice. Any contract requires Agosi's order acknowledgement in writing, whereby the execution of an order is deemed acceptance. Any amendment, supplement or cancellation of a contract or of any of the provisions of these terms and conditions shall be valid only if made in writing. Statements or notifications by the Customer after conclusion of contract shall only be effective if submitted in writing.

**3. Prices and payment:**

3.1 The prices named in the order acknowledgement are applicable. Unless otherwise agreed, these prices apply ex works and do not include packing, insurance, freight, postage and value-added tax.

3.2 Insofar as cost increases occur after conclusion of contract up until execution of the order which were unforeseeable for Agosi and for which Agosi is not at fault, e.g. as a result of an increase in material costs or any introduction or increase of taxes or duties, Agosi shall be entitled to adjust the prices to cater for the changed circumstances.

3.3 Unless otherwise agreed, metals and precious metals will be charged at the price valid at the time of delivery.

3.4 Checks and bills will only be accepted as payment after Agosi's explicit agreement but not in lieu of payment under any circumstances. Any expenses and costs arising in this connection shall be borne by the Customer.

**4. Offsetting and retention:**

The Customer may only offset counterclaims that are uncontested or have been recognized by declaratory judgment. The Customer may only assert a right of retention if this is based on the same contract; this restriction shall not apply if the counterclaims of the Customer are uncontested or have been recognized by declaratory judgment. The Customer does not have a right to satisfaction pursuant to Section 371 of the German Commercial Code [HGB].

**5. Delivery, insurance and passing of the risk:**

5.1 The delivery and refining times are without obligation and are only considered to be approximate unless they were agreed with binding effect. But even then, these are not fixed dates, unless they were expressly agreed.

5.2 The risk passes to Agosi's Customer at the latest when the delivery is dispatched ex works, even if prepaid delivery was exceptionally agreed. If Agosi chooses the type of dispatch, the route or the carrier, Agosi shall only be liable if Agosi is grossly at fault in the selection concerned.

5.3 If Agosi dispatches the goods on behalf of the Customer, Agosi shall be entitled to take out reasonable transport insurance on behalf and at the expense of the Customer, at least for the invoice value of the goods.

5.4 Agosi is entitled to execute partial shipments to a reasonable extent and to invoice these separately.

5.5 Depending on the type of product, deviations of up to 10% in the ordered weights are permitted upon delivery both as regards the total quantity ordered and the individual partial shipment. In the case of fine metals in commercial form, the exact quantities ordered will be dispatched.

5.6 If delivery periods are exceeded, the Customer may only rescind the contract if he has granted Agosi a reasonable additional period with a warning of rejection beforehand and the delivery is not effected within the additional period. This shall not apply if a deadline can be dispensed with under to Section 323 (2) of the German Civil Code [BGB].

5.7 If Agosi is in default of delivery, Agosi shall be liable for the damage caused to the Customer by the default in the event of gross negligence on the part of Agosi. In the event of simple negligence, Agosi's liability for proven damage caused by default shall be restricted to compensation for each completed week of delay amounting to 0.5% of the price in each case (without precious metal), however a maximum of 5% of the price (without precious metal) for the part of the deliveries which could not be used appropriately as a result of the delay. Furthermore, Agosi shall be liable for damage caused by delay in the event of simple negligence only from the time when an additional period set by the Customer has expired.

**6. Refinery, recovery:**

**6.1 Delivery of materials**

The place of delivery for the materials to be refined is Agosi's works at the address specified in No. 1.1, unless otherwise agreed. The Customer shall bear the costs and the risk of delivery, even if Agosi provides a means of transport. The Customer is responsible for proper transport and packaging as well as compliance with any instructions given by Agosi and statutory or official regulations. The delivery of radioactive, mercury-containing or explosive material is prohibited. The delivery of any other hazardous materials for refining, e.g. toxic, caustic, highly inflammable materials for refining as well as materials with hazardous contents, e.g. chlorine, bromine, fluorine, arsenic, selenium, tellurium, bismuth, beryllium etc., is permitted only after obtaining Agosi's prior written consent. The Customer is obliged to observe the relevant regulations on the transport of waste based on European and German waste legislation. The Customer is liable for damage arising as a result of incorrect or incomplete marking.

**6.2 Settlement reservation**

Agosi reserves the right to increase the processing costs contained in the offer or the order acknowledgement and to extend the return delivery/purchasing periods in the event that special qualities of the material, of which Agosi was unaware upon acceptance of the order, entail an additional expense.

**6.3 Liability for goods to be refined**

For negligent misconduct in the treatment or the storage of the materials to be refined, Agosi shall only be liable as specified in Nos. 8 and 9. For losses of materials arising without intent or gross negligence, Agosi shall only be liable if these are covered by Agosi's insurance (for fire and theft), however, the total amount of such claims shall be limited to the value at the time of delivery of the materials delivered. All other risks shall be borne by the Customer. In particular, the Customer shall be liable for all damage attributable to the hazardous nature of the material to be refined (cf. No. 6.1).

**6.4 Settlement and return delivery**

An invoice shall be issued on the basis of the weights and contents determined by Agosi before refining. It becomes binding, unless the Customer objects to it in writing within two weeks of receipt. Agosi shall keep appropriate sample material reserved for this period. In case the Customer objects the invoice, an arbitration analysis of the reserved sample material will be made by an independent laboratory agreed upon by both parties, or failing such agreement, appointed by IHK Nordschwarzwald on request of either party at any time in writing.

The arbitration analysis shall be evaluated as follows:

- If the arbitration analysis lies within the findings of the parties, the basis content for settlement purposes shall be the arithmetic mean between the arbitration analysis and the finding of the party closest to the arbitration analysis.

- If the arbitration analysis coincides with the finding of one of the parties or corresponds to the arithmetic mean of the finding of both parties, settlement shall be based on the arbitration analysis.

- If the arbitration analysis lies outside the findings of the parties, it shall not be evaluated and the finding of the party closest to the arbitration analysis shall be the basis for settlement purposes.

The cost of the arbitration analysis shall be borne by the party whose finding deviates the most from the arbitration analysis. However, if the arbitration analysis corresponds to the arithmetic mean of the two parties' findings, the costs shall be shared equally by the two parties.

6.5 Agosi is entitled to process the material delivered after weighing and sampling have been completed and sample material has been taken.

6.6 The metals and precious metals recovered through refining will be credited to the weight accounts of the Customer; insofar as a purchase was agreed, Agosi shall become the owner upon making the first part payment, unless otherwise agreed in writing.

**7. Precious metal trading and precious metal transfer accounting:**

7.6 Orders placed by the Customer over the telephone only become binding upon Agosi's consent. The damage caused as a result of transmission faults, misunderstandings or errors in telephonic communications with the Customer or with third parties shall be borne by the Customer unless there is any fault on Agosi's part.

7.7 Agosi may cancel credit notes given as a result of an error, a spelling mistake or for any other reasons without any order in this connection, by making a simple entry.

**8. Defects of quality, limitation:**

8.6 The specifications agreed in writing with the Customer shall apply to the quality of Agosi's products; in the absence of specifications agreed in writing, the particulars provided in Agosi's technical data sheets, specifications or drawings shall apply. Supplementary or deviating agreements on the quality must be made in writing. Any suitability of the product which supplements or deviates from the agreed quality for the presupposed or customary use is out of the question.

8.7 All defects must be notified to Agosi in writing immediately, but no later than 5 working days after receipt of the goods (in the case of hidden defects immediately, but no later than 5 working days after discovery). If the Customer fails to notify Agosi, the goods shall be deemed accepted.

8.8 If the goods are defective, Agosi shall, at the Customer's request, replace or rectify them (subsequent performance). If such subsequent performance fails, the Customer shall have the right to reduce the purchase price or to rescind the contract. A right to claim damages exists only to the extent set out in No. 9. The Customer's claims based on defects expire one year after delivery of the goods; notwithstanding this, the statutory limitation periods apply

- in the event of liability as a result of wilful intent or gross negligence or the fraudulent concealment of a defect;
- for claims based on the defectiveness of a product, if this was used for a building according to its customary manner of use and caused the defectiveness thereof;
- for damages resulting from death, physical injury or impairment of health which Agosi, Agosi's legal representatives or Agosi's vicarious agents caused through wilful intent or negligence;
- in case of recourse by the Customer based on regulations on the purchase of consumer goods.

**9. Damages:**

9.6 Unless expressly provided for otherwise, Agosi shall be liable in the event of wilful intent or gross negligence on the part of Agosi itself or of Agosi's representatives or agents in accordance with statutory provisions; this shall also apply in the event of any culpable violation of major contractual obligations (major contractual obligations are such that must be fulfilled for due contractual performance to be possible in the first place or which substantially determine the nature of the contract and on which the contractual partner may rely. In the absence of any wilful or grossly negligent breach of contract, Agosi's liability for damages shall be limited to compensation for typical, foreseeable damage. Its liability in respect of any culpable breach leading to death, physical injury or impairment of health or in respect of any liability under product liability law shall be unaffected thereby. Unless expressly agreed otherwise above or elsewhere, Agosi's liability is excluded.

9.7 The restrictions set out in paragraph 1 also apply to Agosi's legal representatives and agents inasmuch as claims may not be made against these directly.

**10. Product information, guarantees:**

Agosi's details in product brochures or other advertisements about Agosi's products, equipment, plant and methods are based on Agosi's research and Agosi's experience in the field of applied engineering and are merely recommendations. It is not possible to infer any claims based on defects, warranted qualities or warranted use from these details. Agosi reserves the right to make technical modifications in the course of Agosi's product development. The Customer must verify the suitability of Agosi's products and processes for the use or application intended by him on his own

responsibility. This shall also apply to the protection of third party property rights as well as to applications and methods. The properties of samples and specimens are binding only if these have been expressly agreed to define the quality of the goods. Information on the quality and durability and other particulars are warranted only if these are agreed and designated as such.

**11. Retention of title:**

6.5 The goods sold shall remain Agosi's property until payment in full of all current and future claims arising under or in connection with the entire business relationship with the Customer, irrespective of the legal ground. Hence, this includes in particular claims to performance of the contract, to damages based on default, non-performance or the breach of other contractual or pre-contractual duties and claims based on the law of torts and the right to satisfaction.

6.6 The processing or transformation of the reserved goods by the Customer is carried out by the Customer on Agosi's behalf as manufacturer; at the same time the Customer releases Agosi from the manufacturer's liability. If Agosi's goods have been combined, mixed or processed to produce new goods, Agosi's title shall extend to the new product. The Customer hereby assigns to Agosi his rights to the new product. If a third party's right of ownership continues to exist when Agosi's goods are processed, combined or mixed with the third party's goods, Agosi shall acquire co-ownership of the processed goods in a ratio equivalent to that between the value of the processed goods to the value of the new product. The value of the processed goods at the time of such processing, combination or mixing shall apply. If the Customer combines or mixes Agosi's reserved goods with the main goods of a third party for compensation, the Customer hereby assigns to Agosi his right to compensation from such third party. The above ratio applies accordingly to the amount of the assigned claim.

6.7 The Customer may, in the ordinary course of his business, resell any goods which are subject to Agosi's retention of title. The Customer hereby assigns to Agosi all his claims arising from such resale up to the amount of the value of the reserved goods at the time of the resale. The Customer shall be authorized to collect payments for claims from such resale for as long as he duly meets his obligations towards Agosi. If so requested by Agosi, the Customer shall advise his customers of such assignment of rights and provide Agosi with the information and documents necessary to enforce Agosi's rights vis-à-vis these parties.

6.8 The Customer is obliged to insure the reserved goods at his own expense and to a reasonable extent against fire, water damage, burglary and theft. The Customer hereby assigns to Agosi any possible claims against the insurance up to the amount of the value of the reserved goods at the time of the occurrence of the insured event.

6.9 The Customer is not authorized to dispose of the reserved goods in any manner other than as stated above. In particular, the Customer may not lend on the reserved goods or assign them as collateral, pledge or sell them. Access by third parties to goods and receivables belonging to Agosi shall be notified without undue delay in writing. If so requested by Agosi, the Customer shall provide all the information required on the stocks of the goods belonging to Agosi and on the receivables assigned to Agosi. At Agosi's request, the Customer shall also mark the goods belonging to Agosi as Agosi's property and notify his buyers of the assignment.

6.10 Should the Customer be in default of payment, Agosi shall be entitled to revoke the Customer's authorization to resell the reserved goods and to collect the receivables assigned to Agosi, to disclose the assignment of the receivables and/or to demand the provisional surrender of the goods belonging to Agosi at the expense of the Customer even without rescinding the purchase contract and without granting any period of grace.

6.11 The receivables assigned on the basis of paragraphs 2 to 4 serve to secure all receivables under paragraph 1.

6.12 In the event that the value of the collateral exceeds Agosi's claims against the Customer by more than 10 percent, Agosi shall be obliged to release the collateral in excess of said limitation.

**12. Rights in the event of a deterioration in financial circumstances:**

If it becomes evident after conclusion of the contract that Agosi's claim to counterperformance is jeopardized as a result of the Customer having insufficient funds to pay, Agosi shall have the following rights in addition to the rights under Section 321 of the German Civil Code:

- Agosi can immediately assert claims for which a bill of exchange was presented.
- Agosi is authorized to prohibit the Customer from reselling the goods and - subject to further rights under the reservation of title - to reclaim any unpaid goods at the Customer's expense.
- All metals and precious metals on a weight account of the Customer serve to collateralize all of Agosi's claims against the Customer. Agosi is only obliged to surrender metals or precious metals to the extent that their countervalue exceeds the total amount of all of Agosi's claims.
- Should the Customer be default of payment, Agosi shall be entitled upon so declaring in writing to purchase any metals and precious metals entered on a weight account of the Customer in a quantity equivalent to all of Agosi's pecuniary claims and to offset Agosi's pecuniary claims against the pecuniary claim of the Customer based on such purchase. The exchange rate shall be the rate applicable on the date of purchase.
- Metal and precious metal liabilities of the Customer may be settled by Agosi by selling at the current daily price. The outstanding pecuniary claim created can be set off against any credit balance of the Customer.

**13. Data protection:**

6.13 The Customer's data will be stored in order to document the transaction for commercial and legal purposes.

6.14 Data will only be disclosed to third parties if this is necessary for the performance of the contract. In this connection, the transfer of the Customer's data to Agosi's credit insurer is necessary for the performance of the contract. The Customer may at any time request information on the data stored.

**14. Place of jurisdiction, place of performance and applicable law**

6.15 The place of performance for delivery and payment is Pforzheim, Germany for both parties. For registered merchants, the place of jurisdiction is Pforzheim, Germany. However, Agosi is entitled to bring legal action at the Customer's place of general jurisdiction or at the place of jurisdiction of a branch.

6.16 The contractual relationship is governed solely by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.