

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**  
of ÖGUSSA Österreichische Gold- und Silber-Scheideanstalt Ges.m.b.H.  
Status April 2019

**1. Scope**

1.1. 1.1 The following General Terms and Conditions of Delivery shall apply to all business transactions of ÖGUSSA Österreichische Gold- und Silber-Scheideanstalt Ges.m.b.H. (hereinafter referred to as "ÖGUSSA") in the relationship between ÖGUSSA and business operators within the meaning of Section 1 (1) no. 1 of the Austrian Consumer Protection Act (KSchG) (hereinafter referred to as "Customers"). **These General Terms and Conditions of Delivery shall not apply to legal transactions concluded between ÖGUSSA and consumers.**

1.2. These General Terms and Conditions of Delivery shall be binding for all present and future business transactions between ÖGUSSA and business operators within the meaning of Section 1 (1) no. 1 KSchG, even if no express reference is made to them.

1.3. Deviating or supplementary terms and conditions - in particular the Customer's general terms and conditions of business or sale - shall only apply with the express written consent of ÖGUSSA.

1.4. The contracting party agrees that in the event of the use of their GTC, these present Terms and Conditions shall form the basis in case of doubt, even if the terms and conditions of the contracting party remain unchallenged.

1.5 In this respect, contract performance activities by ÖGUSSA shall not be deemed to constitute consent to contractual conditions deviating from these present Terms and Conditions.

**2. Offer and contract conclusion**

2.1 All offers by ÖGUSSA shall always be subject to change; this shall apply in particular to the prices of precious metals. The contract shall only be concluded upon written confirmation of the order by ÖGUSSA. The documents belonging to the offer, in particular illustrations, drawings, plans, descriptions, cost estimates and other documents shall remain the property of ÖGUSSA, including the content of existing copyrights. These may not be made accessible to third parties without ÖGUSSA's written consent. Information on properties, weight, dimensions and similar specifications shall only form part of the contract to the extent that they are used in the catalogues, circulars, brochures, advertisements, illustrations and price lists used by ÖGUSSA in business transactions.

**3. Prices and terms of payment**

3.1. All ÖGUSSA prices are quoted in EURO and shall apply ex works (ÖGUSSA's registered office), plus the statutory value added tax, unless otherwise agreed. In the event of offsetting, the statutory turnover tax and any levies shall be added to these prices in business transactions. Not included are, for example, the costs for shipping, transfer, loading, handling and other levies, etc. requested by the customer, for which ÖGUSSA shall charge the customer separately.

3.2. Unless otherwise agreed, invoices shall be paid immediately and without deduction. Deviating agreements on terms of payment must be made in writing.

3.3. In the case of payment by acceptance, the discount and other expenses shall be borne by the customer. Payment by bills of exchange and cheques shall only be valid until honoured in full.

3.4. Partial invoices shall always be admissible for partial deliveries. At ÖGUSSA's request, the Customer shall make partial payments in accordance with the progress of the service performance.

#### **4. Delay in payment**

4.1. If the customer is behind schedule with the agreed payment or other services, ÖGUSSA shall be entitled to

- to postpone the fulfilment of its own obligations until the delay in payment or other services have been effected,
- claim a reasonable extension of the delivery period,
- subject to the assertion of greater actual damage caused by delay, to charge interest on arrears from the due date at the statutory rate in mutual business transactions of 8% above the basic interest rate (Section 352 Austrian Commercial Code - UGB) and
- to withdraw from the contract in the event of failure to comply with a reasonable grace period.

4.2. In the event of default, the contracting party undertakes to reimburse ÖGUSSA for the dunning and collection costs incurred, insofar as these are necessary for appropriate legal prosecution and are reasonable in relation to the claim, whereby the contracting party undertakes in particular to reimburse ÖGUSSA for the costs incurred if a collection agency is called in,

insofar as these do not exceed the maximum rates of remuneration due to collection agencies according to the Austrian Ministry for Economy and Labour (BMWA) regulation. In addition, any further damage, in particular also any damage resulting from the fact that correspondingly higher interest accrues on any credit accounts of ÖGUSSA as a consequence of non-payment, shall be compensated irrespective of who is at fault for the delay in payment.

#### **5. Delivery/service performance, delay in acceptance, cost estimate**

5.1. The delivery period, which is to be specially agreed, shall begin with the conclusion of the contract, but never before the complete provision of the permits, documents, releases, etc. to be procured by the Customer, and not before receipt of any agreed advance payment. Compliance with the delivery period by ÖGUSSA presupposes in any case the fulfilment of all main and ancillary contractual obligations by the Customer.

The agreed delivery period may be exceeded by 2 consecutive calendar weeks without ÖGUSSA being in default of performance - the delivery week is always its last calendar day.

5.2. The delivery deadline shall be deemed to have been complied with if, before the time of its expiry, the delivery item has been dispatched by ÖGUSSA or the Customer has been notified in writing of readiness for dispatch within the delivery deadline. Subsequent requests for changes or additions by the Customer shall extend the delivery deadline accordingly. The same shall apply in the event of unforeseen hindrances, insofar as such hindrances demonstrably affect the completion or delivery of the delivery item, such as in particular delays due to force majeure, industrial disputes, strikes, lockouts, delays in the delivery

of essential raw materials, materials or parts. The same shall apply if the aforementioned circumstances occur at ÖGUSSA's sub-suppliers. If delivery cannot take place due to such circumstances, ÖGUSSA shall have the right to withdraw from the contract without the Customer being entitled to any claims whatsoever. This shall also apply in the event that the aforementioned circumstances occur during another delay that is still ongoing.

5.3. If the dispatch of goods ready for dispatch is not possible through no fault of ÖGUSSA or is not desired by the Customer, ÖGUSSA shall have the right to store the goods at the Customer's reasonable expense, whereby delivery shall be deemed to have been made. The agreed terms of payment shall thereby remain unaffected. At the same time, ÖGUSSA shall be entitled either to insist on performance of the contract or to withdraw from the contract after setting a reasonable period of grace - at least one week.

5.4. The illustrations and information on dimensions and weights contained in lists and offers from ÖGUSSA, as well as in offer drawings, as well as information of any other kind, shall be non-binding. Goods shall be delivered in the condition customary in the trade. In the case of purchase according to sample or specimen, the properties of the sample or specimen shall not be deemed to be guaranteed.

5.5. For the calculation of the delivery costs, only the quantities, weight or piece numbers determined by the delivering plant or warehouse at the time of dispatch shall be of relevance.

5.6. Cost estimates shall be subject to payment. The cost estimate has drawn up to the best of our knowledge, but no guarantee can be given for its accuracy. If there are cost overruns of

more than 15%, ÖGUSSA shall inform the contracting party immediately.

In the event of unavoidable cost overruns of up to 15%, a separate notification shall not be required and ÖGUSSA shall be entitled to invoice these costs without further ado.

## **6. Place of performance, transportation, insurance, transfer of risk**

6.1. In the absence of any agreement to the contrary, the goods shall be deemed to have been sold ex works (readiness for collection). The place of performance shall be the place of receipt designated by ÖGUSSA; and for payments, ÖGUSSA's registered office. ÖGUSSA shall deliver ex works, uninsured and duty unpaid. Partial deliveries shall be permissible unless otherwise agreed.

Shipment and packaging by ÖGUSSA shall be carried out at its best discretion, but ÖGUSSA shall not be liable for the most cost-effective shipment for the Customer. If a specific shipping and packaging method is requested by the Customer, this must be agreed in writing.

The undisputed acceptance of the goods by the freight forwarder or carrier shall suffice as proof of faultless packaging.

Unless special instructions are given to ÖGUSSA by the Customer, ÖGUSSA shall be entitled to cover the transport insurance or, in the case of the precious metal business, the securities insurance on behalf of and for the account of the customer.

6.2. The risk of accidental loss and accidental deterioration of the subject matter of the contract or parts thereof shall pass to the Customer at the latest

upon dispatch, even if the Customer has given special instructions to ÖGUSSA.

6.3. At the Customer's request, the shipment shall be insured for transportation at the Customer's expense.

6.4. In all other respects, the INCOTERMS shall apply in the version valid on the date of conclusion of the contract.

## **7. Acceptance**

7.1. At the request of ÖGUSSA, the Customer shall be obliged to participate in an acceptance date and to assist in drawing up and sign an acceptance report on the findings made. All complaints shall be recorded in this report, otherwise the performance of ÖGUSSA shall be deemed to have been approved and accepted free of defects.

7.2. The Customer shall not be entitled to refuse acceptance of ÖGUSSA's service due to minor defects which do not, or do not significantly, impair the fitness for use or the utility value.

## **8. Retention of title and assignment**

8.1. ÖGUSSA shall retain title to the subject matter of the contract until all financial obligations of the customer have been met in full, even if the items to be delivered and manufactured are resold, modified, processed or mixed.

8.2. If the goods are treated or processed by the Customer, the retention of title shall also extend to the new item. In the event of processing, combining or mixing with third-party items, ÖGUSSA shall acquire co-ownership of the new item produced in the fraction corresponding to the ratio of the value of ÖGUSSA's goods to that of the

other item used at the time of processing, combining or mixing.

8.3. The goods shall remain the property of ÖGUSSA until full payment has been made. The goods remain the property of ÖGUSSA until full payment. A resale is only permitted if this has been notified to ÖGUSSA in good time, stating the name or company name and the exact (business) address of the customer, and ÖGUSSA agrees to the sale in writing. In this case, the purchase price claim shall thereby be deemed assigned to ÖGUSSA and ÖGUSSA shall be entitled at any time to notify the buyer of this assignment.

8.4. The Customer expressly agrees that all claims to which ÖGUSSA is entitled against the Customer may be assigned to third parties irrespective of the purpose. Any prohibitions of assignment shall only become legally effective if they are explicitly agreed between the contracting parties in the specific individual case.

## **9. Warranty**

9.1. ÖGUSSA warrants, in accordance with the following provisions, that the subject matter of the contract corresponds to the order upon delivery or collection and is fit for normal use. In this respect, it is expressly stated that only those details concerning properties, weight, mass, capacity, colour, prices and other specifications which are used in the catalogues, circulars, brochures, advertisements, illustrations and price lists, etc. used by ÖGUSSA in business transactions shall form part of the contract.

9.2. The contracting party must always prove that the defect was already present at the time of delivery. Section 924 Austrian Civil Code (ABGB) shall not apply.

9.3. The goods must be inspected immediately upon delivery. ÖGUSSA must also be notified in writing of any defects discovered immediately, but at the latest within 14 days of delivery, stating the nature and extent of the defect.

If a complaint is not made, or not made in time, the goods shall be deemed to have been approved. The assertion of warranty or compensation claims, including consequential damages, as well as the right to contest errors due to defects are excluded in these cases.

The warranty period for business transactions shall be 6 months for movable goods and 2 years for immovable goods from the date of delivery/service.

9.4. Furthermore, no warranty claims exist in the case of defects caused by improper handling or overuse, if statutory operating instructions or operating instructions issued by ÖGUSSA have not been complied with, if the object of purchase was created on the basis of the customer's specifications and the defect is attributable to these specifications, in the event of natural wear and tear, transport damage, improper storage, chemical, electrochemical or electrical influences or in case of poor maintenance.

9.5. Notifications of defects and complaints shall be made with as precise a description of the defect as possible and the Customer shall hand over the contractual items, which are the subject of the complaint, to ÖGUSSA, if feasible. In this case, ÖGUSSA shall have the choice, if the defects are to be remedied by ÖGUSSA in accordance with these present provisions:

- repair the defective subject matter of the contract on the spot,
- to have the defective contractual object or parts thereof sent to ÖGUSSA for the purpose of rectification,
- replace the defective subject matter of the contract or parts thereof;
- if rectification is not possible or only possible at disproportionately high cost, ÖGUSSA shall also have the option of granting a reasonable price reduction.

The assertion of warranty claims shall not release the customer from their payment obligation.

9.6. If the defective contractual object or parts thereof are returned to ÖGUSSA for repair or replacement, the Customer shall bear the costs and the transportation risk.

9.7. If the goods supplied by ÖGUSSA have been further treated or processed by the customer, this shall take place at the Customer's risk. It is the Customer's responsibility to check the materials supplied by ÖGUSSA for their suitability for their intended use. Any resulting consequential damage shall be excluded from ÖGUSSA's obligation to pay compensation.

9.8. ÖGUSSA shall be entitled to carry out or have carried out any investigation it deems necessary. In the event that this investigation shows that ÖGUSSA is not responsible for any errors, the Customer shall bear the costs of this investigation for a reasonable fee.

9.9. If the Customer makes changes to the object of the contract without the prior written consent of ÖGUSSA,

ÖGUSSA's warranty obligation shall expire.

9.10. Section 933b ABGB shall not apply.

## **10. Securities**

ÖGUSSA shall reserve the right to demand advance payments or securities for the performance of the agreed service. The Customer shall in any case be notified of these in good time and in writing. If the customer does not comply with ÖGUSSA's request to provide security, ÖGUSSA shall be entitled to withdraw from the contract within a reasonable period.

## **11. Liability**

11.1. Claims for damages in cases of slight negligence shall be excluded. This shall not apply to personal injury or damage to items accepted for processing, unless the latter has been negotiated in detail.

11.2. Claims for damages shall become statute-barred 6 months after knowledge of the damage and the injuring party.

11.3. ÖGUSSA shall in principle accept no liability for the suitability of the goods delivered, for the purposes envisaged by the buyer and also not for damage caused by processing the product.

11.4. Liability for indirect damage, consequential damage, loss of profit, financial loss, damage due to business interruption, as well as for any claims of third parties against the Customer shall be excluded.

## **12. Premature termination of the contract**

Whenever a delivery/service is not possible for reasons for which the Customer is responsible, or the Customer fails to comply with a legal or contractual obligation towards ÖGUSSA, ÖGUSSA shall be entitled to withdraw from the contract. In this case, the Customer shall compensate ÖGUSSA for any disadvantages incurred as a result and for the loss of profit.

## **13. Labelling of goods**

A modification of the goods manufactured by ÖGUSSA and any special stamping which is considered to be the original labelling of the Customer or a third party, or may give the impression that it is a special product, shall not be permitted.

## **14. Data protection and confidentiality**

14.1. ÖGUSSA shall process personal data of the customer in the course of business and in accordance with the privacy policy <https://www.oegussa.at/de/footerlink/s/date nschutz/>.

14.2. The contracting parties shall undertake to maintain absolute secrecy vis-à-vis third parties in respect of the knowledge they have acquired as a result of the business relationship.

## **15. Money Laundering Regulations**

The provisions of Sections 365m ff of the Trade, Commerce and Industry Regulation Act (GewO) 1994 shall apply mutatis mutandis. Accordingly, identification of the contracting party is required for all cash transactions with a value of € 10,000 or more. This shall apply irrespective of whether a permanent business relationship is established or a transaction is only carried out occasionally in a single process or in several processes.

In accordance with these provisions, ÖGUSSA has the right to establish the identity of the Customer by means of a valid photo ID

before establishing a business relationship or carrying out a transaction. This also includes verification of the power of representation of a third party acting on behalf of the Customer.

## **16. Reworking**

16.1. The place of performance for the delivery of the reworking material shall be the premises of ÖGUSSA, unless otherwise agreed. The Customer shall bear the costs and the risk of delivery. The Customer shall be responsible for proper transportation and packaging and compliance with any instructions issued by ÖGUSSA as well as for legal or official provisions. The delivery of radioactive material or material containing mercury or explosive material shall not be permitted. The delivery of other dangerous, e.g. toxic, corrosive, highly flammable material and the acceptance of material with hazardous components, e.g. chlorine, bromine, arsenic, fluorine, selenium, etc. shall only be permitted with the prior written consent of ÖGUSSA. The Customer shall be obliged to observe the relevant standards under Austrian and European law. The Customer shall be liable for damage caused by incorrect or incomplete labelling.

16.2. ÖGUSSA reserves the right to increase the treatment and processing costs contained in the offer or in the order confirmation as well as to extend the return delivery or purchase periods in the event that special properties of the material, which were not known to ÖGUSSA at the time of acceptance of the order, require additional expenditure. As soon as ÖGUSSA becomes aware of the increase in processing costs and the extension of the return delivery/purchase deadlines, the Customer shall be informed of this immediately.

16.3. ÖGUSSA shall only be liable for culpably improper handling or storage in accordance with Clause 9.

ÖGUSSA shall only be liable for material losses that are not due to intent or gross negligence if these are covered by insurance policies of ÖGUSSA, but at most up to the respective value of the delivered material at the time of delivery. The Customer shall bear all other risks; they shall in particular be liable for all damage attributable to the hazardous nature (16.1.) of the reworking material.

16.4. An invoice shall be drawn up on the basis of the weights determined by ÖGUSSA prior to reworking, and the content determined. It shall become binding if the Customer does not object in writing within two weeks of receipt of the invoice.

16.5. The metals and precious metals obtained by reworking shall be credited to the Customer's weight accounts in accordance with Clause 18; insofar as a purchase of the materials handed over has been agreed with ÖGUSSA in writing, ÖGUSSA shall become the owner upon payment of a first partial payment, unless otherwise agreed in writing.

## **17. Precious metal transfers**

Credit entries that are made as a result of an error, a clerical error or for any other other reasons, without a corresponding order, may be reversed (cancelled) by ÖGUSSA by simple entry.

## **18. Weight accounts for metals and precious metals**

18.1. ÖGUSSA shall maintain separate weight accounts for each Customer and for each metal or precious metal. Stocks of individual account holders shall not be stored separately.

18.2. Each account holder shall be a co-owner of the total stock on hand to the extent of the quantity by weight of a

metal or precious metal recorded in his account. In the case of the purchase or sale of metals or precious metals, the transfer of ownership shall be completed when the respective account is booked. It shall be noted that once the material has been processed or reworked, it cannot be returned to its previous status.

18.3. Weight accounts may only show a negative balance on the basis of a special written agreement with the customer; without prejudice to a written agreement deviating from this, ÖGUSSA shall be entitled at any time to demand payment of negative account balances.

18.4. The weight account may be terminated by all contracting parties for good cause without notice. Good cause shall be deemed to exist if facts are given on the basis of which the terminating party, taking into account all circumstances of the individual case and weighing the interests of the contracting parties, can no longer reasonably be expected to continue the weight accounts, e.g. due to breach of material contractual obligations or due to imminent insolvency.

18.5. Since, in accordance with clause 18.2, the material, once reworked or processed, can no longer be returned to its original condition, the Customer shall receive, upon termination of the weight account, remuneration for the material provided in the amount of the current exchange rate at the time of termination. Ownership of the weight account shall pass to ÖGUSSA at the time of termination and after remuneration.

## **19. Place of jurisdiction, applicable law**

19.1. The exclusive place of jurisdiction for all disputes

arising directly or indirectly from the contract shall be the competent court with the subject-matter jurisdiction for ÖGUSSA's registered office. Notwithstanding this agreement, ÖGUSSA may also bring an action at the Customer's general place of jurisdiction.

19.2. The contract shall be governed by Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods and those provisions of the conflict of laws which would refer to foreign law.

## **20. Other provisions**

20.1. Should any provision of these General Terms and Conditions of Delivery be or become legally invalid in whole or in part, this shall not affect the legal validity or enforceability of all other terms and conditions of delivery. The contracting parties shall replace the legally invalid or unenforceable provision by a valid and enforceable provision which comes as close as possible to the legally invalid or unenforceable provision in terms of content and purpose. This shall also apply to loopholes in these Terms and Conditions of Delivery.

20.2. Amendments or supplements to a contract shall be in written form. This shall also apply to the amendment of the written form requirement.

20.3. The Customer shall not be entitled to transfer rights from this contract to third parties without ÖGUSSA's prior written consent.

20.4. Offsetting against counter-claims of the Customer which are disputed by ÖGUSSA or which have not been legally established by a court of law shall not be permitted. The same shall apply to the assertion of a right of retention on the part of the Customer.

20.5. The customer expressly waives the right to contest or adjust the contract on the grounds of error.



