

# **TERMS AND CONDITIONS OF PURCHASE**

## **of Ögussa**

Österreichische Gold- und Silber Scheideanstalt Ges.m.b.H

### **1. Scope**

1.1. The following **Terms and Conditions of Purchase** shall apply to all business transactions of ÖGUSSA Österreichische Gold- und Silber Scheideanstalt GmbH (hereinafter referred to as "**ÖGUSSA**") as Buyer or Client in the relationship between ÖGUSSA and business operators within the meaning of Section 1 (1) no. 1 KSchG (hereinafter referred to as "**Seller**" or "**Contractor**"). **These Terms and Conditions of Purchase shall not apply to legal transactions concluded between ÖGUSSA and consumers** within the meaning of Section 1 (1) no. 2 of the Austrian Consumer Protection Act (KSchG).

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

1.3. The Seller agrees that in the event of the use of GTC by them, the present terms and conditions of purchase of ÖGUSSA shall apply, even if the terms and conditions of the Seller remain unchallenged.

1.4. In this respect, contractual performance activities by ÖGUSSA shall not be deemed to constitute consent to contractual conditions deviating from the present Terms and Conditions of Purchase.

1.5. Agents of ÖGUSSA shall only be entitled to bind them within the framework of these Terms and Conditions of Purchase.

### **2. Contract conclusion**

2.1. Orders, contracts and call-offs, as

well as amendments and supplements thereto, must be in writing. The written form requirement shall also apply for any deviation from these Terms and Conditions of Purchase.

2.2. Each order shall be confirmed in writing to ÖGUSSA by the Seller or Contractor. The contract shall only be concluded upon written confirmation of the order by the Seller or Contractor.

2.3. ÖGUSSA may revoke the order within 14 days, even if the Seller or Contractor has already accepted it.

2.4. If the order confirmation deviates from the order, ÖGUSSA shall only be bound if it expressly agrees to the deviations in writing.

2.5. The scope of delivery and the price agreed shall, in case of doubt, include all those parts which, according to general commercial practice, are assigned to the main service or which are necessary for the use presupposed by general commercial practice or contractually promised, even if the individual parts required for this are not explicitly stated in the order.

2.6. All information provided in the order, the drawings and parts lists of ÖGUSSA, as well as all information provided in offers, brochures, product descriptions and catalogues of the Seller or the Contractor, in particular adherence to delivery dates and delivery times, shall be deemed guaranteed.

2.7. Unless otherwise agreed, offers or cost estimates addressed to ÖGUSSA shall be binding and free of charge.

### **3. Shipping**

3.1. The Seller or Contractor shall, at the time specified in the order,

deliver to the place of delivery and performance. When shipping, the relevant tariff, transportation and packaging regulations of the respective means of transportation shall be observed by the Seller or Contractor, in particular with regard to any existing customs and risk regulations. The means of transportation most favourable to ÖGUSSA in terms of price shall be chosen, unless ÖGUSSA has expressly specified specific transportation regulations.

3.2. In addition to the shipping address, the Seller or Contractor shall always state the order details (order number, order date, place of delivery and performance, name of the consignee, if applicable, and material number) in the transportation documents. The delivery items shall be labelled in accordance with the respective regulations of the EC/EU directives and regulations concerning hazardous substances in the respective current version. The Seller or Contractor shall be obliged to provide ÖGUSSA with all necessary product information, e.g. safety data sheets, processing instructions, labelling regulations, occupational health and safety measures, etc. in the current version before dispatching the delivery. All information, including drawings and other documents, which ÖGUSSA requires for the installation, operation, maintenance or repair of the delivery item, shall be made available to ÖGUSSA by the Seller or Contractor prior to dispatch of the delivery and without applying additional costs.

3.3. The unit weight shall be clearly visible and permanently affixed to loading units (from 1 tonne).

3.4. Only packaging that complies with the objectives and requirements of the national and any European packaging regulations in their respective valid version may be used.

3.5. Insofar as the Seller's or Contractor's deliveries generate waste in addition to the packaging,

as defined by the relevant waste legislation, the Seller shall recycle or dispose of this waste – unless otherwise agreed in writing – at their own expense, in accordance with the current provisions of waste legislation. Ownership, risk and responsibility under waste management law with regard to the waste arising in addition to the packaging shall pass to the Seller or Contractor at the time of delivery.

3.6. Each delivery shall be accompanied by packing slips or delivery notes stating the contents as well as the complete order designation including order number, date and material number, if this is stated in the order. Different articles shall be packed separately and labelled accordingly.

3.7. Deliveries of cross-border goods are to be delivered to ÖGUSSA under the Community transit procedure duty unpaid. ÖGUSSA must be notified of these deliveries prior to dispatch for the purpose of proper customs control. In particular, all relevant transport data shall be communicated at the same time and all documents necessary for customs clearance made available in good time. If direct delivery to ÖGUSSA's customers has been agreed, the same shall apply.

3.8. The Seller or Contractor shall in any case be liable for compliance with all relevant statutory provisions.

3.9. The Seller or Customer shall only be entitled to make partial deliveries with the express written consent of ÖGUSSA.

#### **4. Delivery date**

4.1. The agreed delivery dates and locations shall be adhered to by the Seller or Contractor (fixed transaction). If the delivery date is not met, ÖGUSSA shall have the option to withdraw from the contract by setting a reasonable grace period. In this case, the Seller or Contractor shall be liable to ÖGUSSA

and third parties for any damage caused by the delay.

4.2. The Seller or Contractor may only invoke the absence of necessary documents, information, etc. to be supplied by ÖGUSSA if they have not received them within a reasonable period of time despite a written reminder.

4.3. In the event of (partial) delay, ÖGUSSA shall be entitled to withhold the entire purchase price until the Seller or Contractor has carried out the activity in accordance with the contract. ÖGUSSA shall be entitled to withdraw from the entire contract by setting a reasonable deadline, even in the event of partial delay.

4.4. The goods purchased by ÖGUSSA shall be deemed to be a debt to be discharged at the place of delivery. The Seller or Contractor shall therefore bear the costs and transportation risk. The risk of loss or damage shall not pass to ÖGUSSA until the goods are handed over.

## **5. Proof of performance / acceptance**

Any contractually stipulated proof of performance and acceptance must be recorded in writing.

## **6. Implementation**

The Seller or Contractor shall maintain a quality assurance system, e.g. in accordance with DIN EN ISO 9000ff and/or DIN ISO 14001. ÖGUSSA shall be entitled to inspect the Seller's or Contractor's system by means of quality audits after consultation.

## **7. Weights / quantities**

In the event of weight deviations, the weight determined by ÖGUSSA when determining receipt shall apply if the Seller or Contractor does not prove that the weight calculated by them at the time of transfer of risk is correct according to a

generally accepted method. The same shall apply to quantities.

## **8. Price and payment**

8.1. In the absence of any other written agreement, the prices quoted to ÖGUSSA shall be inclusive of all costs for dispatch, transportation, insurance, taxes, duties and fees as well as customs and assembly, if agreed, plus VAT. Agreed prices or prices on which the contract is based shall be deemed to be fixed prices.

8.2. Invoices must be issued in duplicate, the second copy being clearly labelled as such. The purchase order number and the material number must be stated in the invoice – the assignment of invoice amounts to purchase order items must be unambiguous. Each invoice must be issued in euros and show VAT separately. The invoice shall be sent separately to the invoice address stated in the purchase order.

8.3. In the absence of other written agreements, payments shall be due within 14 days less a 2% discount or within 30 days net, subject to a reasonable time for invoice verification. The payment period for cash discount deduction shall begin as soon as the delivery or service has been rendered on time and in full and upon receipt of an invoice correctly issued. A cash discount deduction is also permissible if ÖGUSSA offsets or withholds payments in an appropriate amount due to defects. In this case, the payment deadline shall begin once the defects have been fully remedied. If the settlement is to be made in instalments as agreed, ÖGUSSA shall not lose its discount deduction for the partial amounts paid in good time if other partial payments are not paid within the discount or due date.

## 9. Warranty and liability

9.1 The statutory warranty obligation of the Seller or Contractor, as well as their statutory obligation to pay damages, shall apply in full.

9.2 Exclusions and limitations of liability on the part of the Seller or Contractor shall not be accepted by ÖGUSSA, unless these have been expressly agreed in individual cases.

In the event of any defects, ÖGUSSA shall be free to choose between replacement, repair or price reduction. Any conversion claim of ÖGUSSA shall remain unaffected.

Insofar as ÖGUSSA insists on repair or replacement, ÖGUSSA shall be entitled to retain the entire payment until the service / delivery has been rendered in full.

The obligation to inspect defective deliveries of goods in accordance with Section 377 of the Austrian Commercial Code (UGB) (notification of defects) shall be excluded.

9.3. For deliveries repaired or serviced within the statutory warranty periods, the limitation periods for damages and the warranty periods shall recommence from the time when the Seller or Contractor has fully satisfied the claims for replacement or improvement.

9.4. The Seller or Contractor shall be liable to ÖGUSSA and third parties for any damage caused by the defective or incomplete delivery or performance.

9.5. The Seller or Contractor shall guarantee freedom from third-party property rights and shall indemnify and hold ÖGUSSA harmless in the event of a breach.

## 10. Contractual penalty

10.1. The contractual penalty for breach of agreed delivery dates for reasons

for which the Seller or Contractor is responsible shall amount to 0.1% of the net order value per working day, but not more than 5% of the order value.

If a delivery date is delayed for reasons for which the Seller or Contractor is not responsible, the effective date for the start of the contractual penalty shall be postponed in accordance with the newly agreed dates. In the event that the delay in delivery for which the Seller or Contractor is responsible exceeds 10 weeks, ÖGUSSA shall be entitled – insofar as ÖGUSSA continues to demand fulfilment of the contract – to demand interest on partial payments already made at the statutory rate, or for mutual business transactions (Section 352 UGB), 8% above the base interest rate.

10.2. Any liability of the Seller or Contractor for damages exceeding the contractual penalty shall remain unaffected (Section 1336 (2) ABGB).

## 11. Insurance

The Seller or Contractor shall maintain liability insurance cover at conditions customary in the industry for the duration of the contractual relationship, including the guarantee and warranty period, and provide ÖGUSSA with proof of this upon request. The minimum insured sum per damage event shall be at least EUR 2 million.

Smaller insured sums may only be agreed in writing with ÖGUSSA in individual cases.

## 12. Transfer of orders to third parties, assignment of claims

12.1. The subcontracting of orders to third parties (subcontractors) without the written consent of ÖGUSSA shall not be permitted and shall entitle ÖGUSSA to withdraw from the contract in whole or in part and to claim damages.

If ÖGUSSA has agreed to the use of a subcontractor by the Seller or Client, the latter shall name the Seller or Client as its Client

in the correspondence and shipping documents, stating the order data.

12.2. Claims of the Seller or Contractor against ÖGUSSA may only be assigned with ÖGUSSA's written consent.

### **13. Entering and driving on the factory premises / construction site:**

13.1. When entering and driving onto the ÖGUSSA works premises and any construction sites, the instructions of the specialist personnel shall be followed. Notification is to be given in good time of entering or driving onto the works premises/the construction site. The regulations of the Road Traffic Act (StVO) are to be complied with. If services are rendered on the works premises or construction site, the corresponding works or construction site regulations shall apply.

13.2. Any liability of ÖGUSSA for property damage of the Seller or Contractor shall be excluded – to the extent legally permissible; liability shall otherwise be limited to € 10,000.00.

### **14. Money laundering regulations**

The provisions of Sections 365m ff of the Austrian Trade, Commerce and Industry Regulation Act (Gewerbeordnung) 1994 shall apply mutatis mutandis. Accordingly, identification of the contracting party shall be required for all cash transactions with a value of € 15,000.00 or more. This is 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 shall have the right to establish the identity of the Seller or Contractor by means of a valid identity card, passport or driving licence prior to the establishment of a business relationship or prior to a transaction act. This shall also include

checking the power of representation of a person acting on behalf of the Seller or Contractor.

### **15. Provision of materials, planning documents, documentation**

15.1. Material provision shall remain the property of ÖGUSSA and shall be stored, designated and managed separately free of charge. They may only be used for orders permitted by ÖGUSSA. In the event of depreciation or loss, the Seller or Contractor shall provide appropriate compensation.

15.2. Drawings, drafts, etc. (planning documents) prepared by the Seller or Contractor according to ÖGUSSA's special instructions shall become the unrestricted property of ÖGUSSA without additional remuneration. Statements to the contrary by the Seller or Contractor shall not be binding. Planning documents are to be handed over on the delivery date together with the agreed documents and all other documents necessary for commissioning, maintenance and servicing, including documentation, source text, assembly and operating instructions (documentation records). Notwithstanding any additional rights, ÖGUSSA shall be entitled to a right of retention of claims of the Seller or Contractor in an appropriate amount until all of the planning and documentation records have been surrendered.

### **16. Promotional material**

16.1. Reference to ÖGUSSA in information and / or advertising materials shall only be permitted with express written consent.

16.2. The Seller or Contractor shall be obliged to keep secret all information, knowledge and documents of whatever kind,

e.g. technical and other data, measured values, technology, operating experience, sketches, plans, trade secrets, know-how, drawings and other documentation (information) received from ÖGUSSA or originating from the area of an affiliated company (UMICORE company), not to make them accessible to third parties and to use them only for the purpose of processing the respective order.

This shall not apply if the information was already known to the Seller or Contractor or becomes known to them without any infringement of the rights of the Seller or Contractor or third parties being the cause thereof. After termination of the business relationship with the Seller or Contractor, the latter shall undertake to return all physically transmitted information such as documents, samples, specimens, software and the like to ÖGUSSA without delay, without retaining copies or records, and to confirm this to ÖGUSSA in writing.

## **17. Severability clause**

The invalidity of a provision of the present contract or the present Terms and Conditions of Purchase shall not affect the validity of the remainder of the contract or the remaining terms and conditions.

## **18. Jurisdiction, applicable law, place of performance**

18.1. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contract is the competent court for the registered office of ÖGUSSA in commercial matters. Notwithstanding this agreement, ÖGUSSA may also bring an action at the general place of jurisdiction of the Seller or Contractor.

18.2. 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.

18.3. The place of performance for deliveries and services shall be the place of receipt designated by ÖGUSSA; and for payments, the registered office of ÖGUSSA.