

XRF Scientific Europe GmbH General Terms and Conditions of Sale and Delivery 08/2016

1. General provisions, scope of application

1.1. The following General Terms and Conditions of Sale and Delivery (hereinafter GTS) apply to all contracts concluded by XRF Scientific Europe GmbH (hereinafter XRF), provided the contracting parties have not expressly and in writing agreed otherwise. Deviating terms and conditions of the Customer apply only if XRF has expressly and in writing consented thereto.

1.2. Our GTS apply exclusively. General terms and conditions of the Customer that deviate from, conflict with or supplement these GTS will become contractual components only if we expressly approved their applicability. This approval requirement applies in any case, for example also if we unconditionally execute delivery to the Customer in knowledge of the Customer's GTC.

1.3. Actions taken by XRF in performance of the contract insofar do not constitute any approval of contractual terms deviating from these GTS. If nonetheless uncertainties remain upon interpretation of the contract, these shall be clarified in the way that those contents shall be deemed agreed which are usually agreed in comparable cases.

1.4. Legally relevant declarations and notices to be made towards us by the Customer after the conclusion of the contract (e.g. setting of periods, notices of defects, declaration of withdrawal or reduction) require written form to be valid.

2. Subject matter and scope of services (offer, samples, guarantees, conclusion of contract)

2.1 XRF's offers are non-binding, unless expressly otherwise stated. This in particular applies to the prices of precious metals. The documents relating to the offer, such as illustrations, drawings, plans, descriptions and other documents remain in the ownership of XRF, including the copyrights to the content. They must not be made accessible to any third party without the written consent of XRF. XRF is principally not obliged to check any statements or specifications of the Customer on which XRF bases its offer or the order confirmation for correctness or to verify whether the execution of the order interferes with proprietary rights of third parties. Risks identified by XRF will be notified to the Customer.

2.2 The order of goods by the Customer is deemed a binding contract offer. Unless the order states otherwise, we will be entitled to accept this contract offer within two weeks of receipt. Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Customer.

2.3 Warranties, side agreements and amendments to the contract require written form to be valid.

2.4 The Customer is not entitled to assign any rights under this contract to third parties without prior consent.

2.5 For lack of divergent written agreements, XRF will deliver within a tolerance permissible under the applicable German or European industrial standards, in particular DIN, VDE, EN ISO and the like.

2.6 Technical changes required for production reasons or due to changes in law or which serve product maintenance shall be permissible if they are reasonably acceptable to the Customer.

3. Delivery, delivery period, packaging, passing of risk

3.1 The type and scope of performance and the delivery period are determined by the written order confirmation of XRF. XRF is entitled to partial delivery if this is reasonably acceptable to the Customer.

3.2 The delivery period to be separately agreed commences upon conclusion of contract, but never before full provision of the permits, documents, releases, etc. to be procured by the Customer, and not before receipt of a possibly agreed down-payment. Compliance with the delivery period by XRF in any case requires the fulfilment of all contractual principal and ancillary duties by the Customer. The agreed delivery period may be exceeded by two consecutive calendar weeks without XRF thereby entering into default - the delivery week is always the last calendar day of such week.

3.3 The delivery period has been complied with if the delivery item has been dispatched by XRF by its expiry or if the readiness for dispatch was notified to the Customer in writing within the delivery period. Subsequent changes or supplements requested by the Customer will correspondingly extend the delivery period.

3.4 Cases of force majeure, labour disputes, riots, official measures and similar circumstances outside the control of XRF release XRF from its performance obligation for the duration of the disturbance and to the extent of the resulting effects. This also applies if these circumstances occur at suppliers of XRF or if these incidents occur at a point in time when XRF is already in default. XRF will without undue delay inform the Customer of the beginning and end of such performance impairments.

3.5 The goods of XRF are principally without packaging. If packaging is requested, the Customer will have to bear the costs.

3.6 The goods are delivered ex warehouse, which is also the place of performance of delivery and subsequent performance, if any. Upon request and at the Customer's expense, the goods are sent to a different destination (dispatch to a place other than the place of performance). Unless otherwise agreed we are entitled to determine the type of dispatch (in particular the carrier, forwarding route, packaging).

3.7 The risk of accidental loss or accidental deterioration of the goods shall pass to the Customer at the latest upon handover. In the event of dispatch to a place other than the place of performance, however, the risk of accidental loss or accidental deterioration of the goods, as well as the risk of delay shall pass already upon delivery of the goods to the forwarding agent, the carrier, or to any other person or agency commissioned with the dispatch. Insofar as acceptance is agreed, it shall be authoritative for the passing of risk. In addition, the statutory regulations of the laws on contracts for works and services shall analogously apply to any agreed acceptance. The handover and acceptance is equal to a default of acceptance on the part of the Customer.

3.8. If performance is delayed for reasons for which the Customer is responsible, the risk passes to the Customer upon receipt of the performance readiness notice. In this case, XRF may charge the goods to the Customer as having been delivered, and store them at the Customer's expense and risk.

4. Prices, payment, default

4.1 The prices stated by XRF are exclusive of the statutory value added tax, packaging, dispatch and insurance costs (ex works).

4.2 Invoices are due for immediate payment upon receipt, without any deduction. Agreed terms of payment deviating therefrom require written form.

4.3 Upon default of payment, XRF claims interest in the amount of 9 percentage points above the applicable base rate p.a. (Section 247 German Civil Code). Proof of further default damage remains reserved.

4.4 XRF is not obliged to perform the contract for as long as the Customer does not comply with its obligations, also under other contracts with XRF, as contractually agreed, in particular if the Customer does not pay invoices that are due.

4.5 The Customer can set-off or retain payment based on counterclaims only if these have been undisputedly established in writing or by final and non-appealable judgment.

4.6 If the Customer is in default of payment or if circumstances occur which raise doubts as to the Customer's solvency in consideration of aspects customary in the banking business, XRF shall be entitled to render outstanding performances only against prepayment.

5. Retention of title

5.1 Until full payment of all our current and future claims under the purchase contract and any ongoing business relationship (secured claims), we retain title to the goods sold by us.

5.2 The goods subject to retention of title may neither be pledged nor assigned by way of security to any third party until full payment of the secured claims. The Customer must without undue delay inform us in writing if a petition for opening insolvency proceedings has been filed or if third parties access our goods (e.g. attachments).

5.3 If the Customer breaches the contract, in particular in the case of non-payment of the due purchase price, we will be entitled to withdraw from the contract according to the statutory regulations, and to request return of the goods based on the retention of title and withdrawal.

5.4 Until revocation according to 5.7 below, the Customer is entitled to resell and/or process the goods subject to retention of title within the ordinary course of business. In this case, the following provisions shall additionally apply.

5.5 The retention of title extends to the products resulting from any processing, mixing or combining of our goods, with us being deemed the manufacturer. If upon processing, mixing and combining with third party goods the ownership rights of such third party remain valid, we will acquire co-ownership in proportion of the invoiced values of the processed, mixed or combined goods. Besides, the resulting product is subject to the same provisions as the goods delivered on retention of title.

5.6 The Customer already here and now assigns the claims arising against third parties from the resale of the goods or products to us by way of security, either as a whole or in proportion to our co-ownership share according to the foregoing paragraph. We accept this assignment. The Customer's obligations set forth in para. 2 also apply with regard to the assigned claims.

5.7 Beside ourselves, the Customer remains entitled to collect the claim. We undertake not to collect the claim for as long as the Customer complies with its payment obligations to us, no lack of payment capacity occurs and we do not assert the retention of title by exercising a right set forth in 5.3. If that is the case, however, we may request the Customer to disclose the claims assigned to us and the respective debtors, to give all information necessary for recovery, to hand out the documents pertaining thereto and to notify the debtors (third parties) of the assignment. Furthermore, we will in such case be entitled to revoke the Customer's entitlement to resell and process the goods subject to retention of title.

5.8 If the realisable value of the collateral exceeds our claims by over 10%, we shall, at the Customer's request, release collateral at our option.

6. Warranty, liability and damages

6.1 Only insignificant deviations from the agreed or customary quality do not constitute a defect of the product or performance. General instructions of use or application examples in the XRF product brochures or other advertising material do not release the Customer from thoroughly examining whether the goods are suitable for the concretely intended purpose of use. Special application requests of the Customer are only relevant if XRF confirmed to the Purchaser in writing upon conclusion of the contract that the delivered goods are suitable for the use intended by the Customer.

6.2 The Customer shall without undue delay inform XRF about any claims based on defects asserted by its own customers, which relate to any performance rendered by XRF, otherwise, the Customer's claims based on defects against XRF will be excluded. In addition, the Customer shall secure suitable proof and provide it to XRF.

XRF may request the Customer to surrender a product declared defective for the purpose of examining the defect, including any documents, samples and packing slips relating thereto. Claims of the Customer based on defects or incomplete performance shall be excluded if the Customer does not comply with such reasonably acceptable request. This also applies in the event that customers of XRF's Customer assert claims relating to performance by XRF.

6.3 In case of product defects, XRF shall provide subsequent performance at its choice, either by removal of the defect or by delivery of a product free from defects. We are entitled to make the owed subsequent performance dependent on the Customer's payment of the due purchase price. However, the Customer will be entitled to retain a part of the purchase price which is reasonable in relation to the defect. The Customer will be entitled to withdraw or to reduce the price according to the statutory regulations only if subsequent performance has failed twice or is unacceptable, and the defect is more than just insignificant.

6.4 Insofar as any damage is caused by improper use, change, assembly and/or operation of the products of XRF or by deficient instructions by the Customer, and is not based on any fault of XRF, corresponding compensation shall be excluded. When XRF processes any material provided by the Customer, XRF shall not be liable for any defects caused by the properties of the provided material. If any defects in the provided material make it unusable during processing, XRF shall nonetheless be remunerated for the processing efforts.

6.5 Claims against XRF for express assumption of a guarantee or a procurement risk, culpable injury of life body or health, in case of claims based on the Product Liability Act, and in case of any other intentional or grossly negligent breaches of duty shall become statute-barred according to the law. Otherwise, claims for defects of quality and title shall become statute-barred twelve months from passing of risk.

6.6 XRF will be liable without limitation upon express assumption of a guarantee or procurement risk, culpable injury of life body or health, in case of claims based on the Product Liability Act, and in case of any other intentional or grossly negligent breaches of duty. In this respect, the statutory limitation period shall apply. XRF will be liable for slight or normal negligence and any damage to property or financial losses only in the case of a breach of material contractual obligations which are indispensable for proper performance of the contract and on whose fulfilment the Customer may especially rely, but limited to the damage foreseeable upon conclusion of the contract and typical for the relevant type of contract. In case of default, XRF shall be liable at 0.5% of the value of the delayed performance per completed week, but maximum at 5% of such value. Any further liability for damages shall be excluded, irrespective of the legal nature of the asserted claim.

6.7 The above-stated limitations of liability apply in terms of cause and amount also in favour of the statutory representatives, employees and other vicarious agents of XRF.

7. Premature cancellation of contract and error

As soon as any delivery/performance is impossible for reasons for which the Customer is responsible, or if the Customer does not comply with any statutory or contractual obligation owed to XRF, XRF will be entitled to withdraw from the contract. In that case, the Customer will have to compensate XRF for any damage and loss of profit incurred as a consequence.

8. Precious metal weight accounts

8.1 In business dealings involving precious metals, XRF maintains weight accounts. The precious metal stocks of the individual account holders are not separately stored. The individual account holders form a community of owners managed by XRF.

8.2 Each account holder is a co-owner of the existing total stock in the amount of the weight of a precious metal posted on its account. Upon purchase or sale of precious metal, ownership passes upon posting on the respective account.

8.3 The weight accounts are kept as current accounts per metal. XRF regularly issues balance confirmations and metal account statements by which the mutual claims for delivery of metal that arise during the stated period are set-off and replaced by the claim to the balance. The Customer has to raise any objections for incorrectness or incompleteness of a balance confirmation or metal account statement at the latest before expiry of six weeks after receipt; if the Customer objects in writing, the mailing within the six-week period shall suffice. The omission of timely objections is deemed as approval. The Customer may demand a correction of the balance confirmation or the metal account statement even after expiry of the period but must in such case prove that its account was wrongfully charged or that a credit entry to which it is entitled was not made.

8.4 The weight account can be terminated without notice by all contracting parties if good cause is given. Good cause is given if any facts arise based on which the terminating party can in consideration of all circumstances of the individual case and in consideration of the interests of the parties not be expected to accept the continued existence of the weight accounts, e.g. due to a breach of material contractual obligations or threatening illiquidity.

8.5 Due to the fact that material once reworked or processed can no longer be restored to its original condition, the Customer will upon termination of the weight account receive a remuneration for the provided material in the amount of the current conversion rate at the time of termination. Title to the weight account passes to XRF on the termination date and after remuneration.

8.6 Supply of any radioactive, mercurial or explosive material is prohibited.

8.7 XRF reserves the right to increase the handling and processing costs stated in the offer or in the order confirmation, and to an extension of the redelivery or purchase periods, for the case that specific qualities of the material unknown to XRF upon acceptance of the order require additional efforts. As soon as XRF gains knowledge of the increase in the handling and processing costs as well as the extension of the redelivery/purchase periods, the Customer will be promptly informed.

8.8 Credit notes issued based on an error, typing error or for any other reasons without a corresponding order being available may be reversed by XRF by simple posting.

8.9. The weight accounts may show a negative balance only subject to separate agreement with the Customer. Without prejudice to any agreement deviating therefrom which requires written form, XRF shall be entitled to set a due date for negative account balances after written request with setting of a period, and to settle these balances at its own discretion at the Customer's expense by delivery or additional purchase or other replacement procurement of the corresponding quantity of the material.

9. Choice of law, place of performance, place of jurisdiction

9.1 These GTS and the contractual relationship between us and the Customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on the International Sale of Goods.

9.2 Place of performance for the services of XRF is the respective delivery plant; with regard to the Customer's payments, the place of performance shall be the registered office of XRF, Karlstein am Main.

9.3 Place of jurisdiction is the registered office of XRF, Karlstein am Main, also for legal actions on cheques and bills of exchange. XRF shall, however, be entitled to also seek legal remedy in any other court that has jurisdiction according to German law or the laws of the state in which the Customer has its registered office.