

General Tolling Conditions Umicore AG & Co. KG, Hanau-Wolfgang (As per: October 2007)

1. **Essential Part of Contract:**
These General Tolling Conditions apply to all contracts relating to the refinery and extraction of precious metals ("Tolling") rendered to commercial customers. Our General Tolling Conditions apply exclusively. Terms and conditions of the Customer, if contrary to or different from or additional to these General Tolling Conditions, shall not apply even if included in an order or appointment based on our offer ("Order"), and even if we do not specifically refuse those or if we implement the Order without any reservation of rights. Our silence shall be interpreted as a refusal of the terms and conditions of the Customer.
2. **Offers, Contracts:**
Prior to acceptance we reserve the right to vary our offers. Any measurement data shall be interpreted with variations as customary in commercial services or according to DIN standards. Any contract requires our acceptance in writing; whereby the execution of an order is deemed acceptance. We reserve the right to rescind from the Contract in case that certain specific characteristics of the material that were not known to us upon acceptance of the Tolling Contract incur any additional costs, and the Customer does not agree to an appropriate increase of the price quoted in the offer, or to an appropriate extension of the delivery/purchase deadlines. Any variation, supplementation or waiver of or under a contract or of any provision of these General Tolling Conditions shall be valid in writing only. Notices and communications of the Customer after the execution of the Contract shall be valid in writing only.
3. **Prices:**
Our prices do not include value added tax.
In case our prices are quoted in currencies other than Euro, these prices are based on the rate of exchange stated in our offer. If the spot rate of exchange as quoted on the Interbank Rates (Frankfurt am Main) varies from the rate as quoted in our offer by more than Euro 0,02, the price will be adjusted accordingly. The rate of exchange shall be determined as of the date the materials arrive at our works.
4. **Delivery of Materials to be Refined:**
According to EU and German waste regulations the raw materials delivered to us for recovery, are generally considered as waste for recovery. Therefore, the Customer is obliged to fulfill all obligations arising from the waste legislation as applicable. In particular we refer to the regulations on advance notification of transports. We do not accept any waste for final disposal.
The place of delivery for materials for recovery is Hanau-Wolfgang (Precious Metals Chemistry plant Wolfgang), except if agreed otherwise. The Customer shall bear all costs of transportation. This shall also apply if transportation is provided by us.
The material to be refined shall be packed properly in compliance with statutory shipping regulations and any instructions given by us.
Delivery of hazardous materials (e.g. toxic, caustic, explosive, highly inflammable or radioactive) as well as materials with potentially harmful effects (e.g. chlorine, bromine, fluorine, mercury, arsenic, selenium, tellurium, etc.) shall only be made after our prior written consent.
Empty containers will be returned on request of the Customer on his costs and risk.
5. **Liability for Material to be Refined:**
For negligent misconduct in the treatment or the storage of the materials to be refined, the limitations of our liability as per Clauses 13 and 14 below shall apply. For losses of materials arising without fault or gross negligence from our side we are only liable within the coverage of our insurance policies (fire, burglary, robbery), however, the total amount of such claims shall be limited to the value of the materials delivered, such value to be determined as of the time of delivery. All other risks shall be borne by the Customer. In particular, the Customer shall be liable for all damages attributable to the hazardous nature of the material to be refined (cf. Clause 4 above). The Customer's liability shall cease when the material is ultimately refined by us. However, in case of radioactivity, such liability shall continue until the content of radioactive isotopes has fallen below the values permissible for our precious metal produced and precious metals products.
6. **Settlement:**
 - a) Weighing, sampling and moisture analyses will be performed at our Precious Metals Chemistry plant Wolfgang and shall be binding for the Customer. The Customer has the right to be represented by an independent and neutral expert at his expense. In this case settlement and invoicing will be carried out according to Clause 6.b) below. If the Customer elects not to be represented, these works will be performed by us as trustee. Then settlement will be made on the basis of the values and analytical data ascertained by us. If the Customer disagrees with these data established by us, he shall have to notify us accordingly in writing without undue delay upon receipt of the settlement note, latest however within 14 working days after the date of the settlement note.
 - b) If the Customer elects to be represented during sampling in accordance to Clause 6.a) the contents ascertained by the customer or his agent and the contents ascertained in our laboratories shall be exchanged in writing on an agreed upon date.
 - c) If the agreed maximum variation is exceeded or there is no agreement on splitting limits, both sides will endeavour to reach an amicable agreement on the contents for all settlement purposes. Failing this, an arbitration analysis will be decisive and binding, such analysis to be performed by an independent laboratory agreed upon by both parties, or failing such agreement, to be appointed by IHK Hanau-Gelnhäusen-Schlüchtern, on request of either party at any time in writing.
 - d) The arbitration analysis shall be evaluated as follows:
 - aa) 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.
 - bb) 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.
 - cc) 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.
If the Customer is represented by a laboratory at the sampling, such laboratory shall not be chosen as arbitrator.
Samples drawn by us or the Customer or his representative, as the case may be, during sampling operations ("Samples") shall be kept by us and the Customer for a period of six months.
7. **Processing of the Material:**
We are entitled to release the materials for processing upon completion of the weighing and sampling or, as far as applicable, after samples have been taken for the Customer's representative and for an arbitration analysis.
8. **Weight Account:**
We keep separate weight accounts for each customer and each precious metal free of charge. All precious metals derived from the tolling of the Customer's materials shall be credited to the Customer's account of precious metals, except if such precious metals are immediately purchased by us. Subject to clauses 9 and 11 hereof, the Customer can request delivery of precious metals from the amount kept on his weight account, however, he cannot request delivery of exactly the material derived from the given tolling job.
9. **Security:**
All precious metals delivered shall serve as security for all claims of Umicore AG & Co. KG. arising from the commercial relationship with the Customer. We are obliged to release precious metals only if and as far as the value of such precious metals exceeds the total value of all claims of Umicore AG & Co. KG. from the commercial relationship with the Customer.
If the Customer is in delay, we are entitled to purchase, through a written notice, precious metals recorded on the weight account of the Customer at an amount equal to the total amount of payment claims due from the given Customer, and we are entitled to set off our payment claims against the claim of the Customer arising from such purchase. The exchange rate valid on the day of purchase shall be used.
10. **Payment:**
The invoiced amounts shall become due for payment upon receipt of the invoice by the Customer. We reserve the right to demand, in writing, prepayment or adequate securities up to the value of the refining price should circumstances subsequently arise or become known to us suggesting that our claims could be at risk. If the Customer fails to provide such prepayment or security within 10 days after receipt of said written request, we shall be entitled to rescind from the contract without further notice periods. Clause 9 shall remain in force. All payments shall be remitted by the Customer on his own risk to the place of payment specified in the invoice.
11. **Return of the Metals / Fixing of the Purchase Price:**
On conclusion of a contract the parties shall decide whether and in which form the recovered metals are to be returned to the Customer or whether and at which price Umicore AG & Co. KG. purchases them. If the parties have not agreed on purchase, all precious metals derived from tolling shall be credited to the weight account of the Customer. In all offers we will specify the periods for return or purchase. The place of delivery for purchase is Hanau-Wolfgang (Precious Metals Chemistry plant Wolfgang), except if agreed otherwise. The Customer shall always bear the costs and risks of the return delivery. We shall determine the packing, the mode and route of shipment and the carrier to the best of our consideration. Partial deliveries are also permissible. We shall also be entitled to take out, on behalf and for the account of the customer transport insurance of valuables in transit, covering the value of the goods. Even if a notice is sufficient or not necessary according to the law, we shall be in delay only after expiry of an appropriate written additional period to remedy.
12. **Force Majeure, Breakdown of Plant Operations:**
In the event of acts of God, such as fire, war, riots, pillage and natural catastrophes as well as of labour disputes and disruptions of transport of plant operations, directions by authorities, lack of energy or raw materials or other difficulties beyond the control of the parties, and which affect either party during the term of a contract, all commitments arising from a contract shall be suspended for the duration and scope of the impediment. In each case the parties shall amicably agree if and to which amount short deliveries, if any caused by Force Majeure shall be made up subsequently. duly announced shutdown of plant operations shall extend the period of time for disposal of metals accordingly.
13. **Claims in Respect of Returned Metals:**
All Claims in particular complaints must be notified to us in writing immediately, but not later than 5 working days after receipt of the goods (in the case of latent defects, immediately but not later than 5 working days after discovery). If the Customer does not send such notice, the goods shall be deemed accepted. If goods are defective, we shall replace or correct them upon request of the Customer (remedy). If such remedy does not work out, the Customer shall have the right to choose to reduce the value of or to withdraw from the contract. Claims for complaints shall expire within one year from the start of statutory limitations. A claim for indemnity shall only apply to the extent defined in clause 14 hereof.
Short deliveries shall be supplied only to the extent reasonable. Otherwise sentence 4 applies; sentences 5 and 6 remain applicable.
14. **Limitations and Exclusion of Liability:**
The claims of the Customer for the replacement of lost profit, damages through breakdown of operations and for damages not suffered by the goods delivered but indirectly through such goods (consequential damages) are excluded. Otherwise we shall be held liable only for indemnity under which ever legal title only up to the invoiced value of the goods delivered by us without respect to the value of precious metals contained therein or the services rendered by us. These limitations and exclusion of liability do not apply:
 - a) to damages from personal injury of life, body or health that we, our legal representatives or delivery agents have caused deliberately or through negligence;
 - b) to other damages that we, our legal representatives or delivery agents have caused deliberately or through gross negligence;
 - c) if and to the extent that the obligation breached is essentially important for the achievement of the objective of this agreement (material obligation), and if the damages were predictable;
 - d) if we have malevolently kept silent about a shortfall, or if we have accepted a guarantee for the properties of the subject;
 - e) if and to the extent that we are obliged to provide liability under the Act on Product Liability or for other reasons.
15. **Statements of Accounts:**
The Customer shall examine and verify the correctness and completeness of statements of accounts (in particular, confirmations of balances) as well as other settlements and notifications. Objections to statements of account shall be made in writing latest within one month from the date of the respective notice; other claims shall be submitted without delay. The failure to submit a claim in due time shall be deemed approval. The Customer shall not set off any amount or enforce a right of withholding unless subject to an uncontested and legally established claim, provided that his counterclaim is uncontested, legally binding and valid or ripe for such a decision.
16. **Place of Jurisdiction:**
Place of jurisdiction is Hanau, Germany. However, we are entitled to lay claims against the Customer at his general place of jurisdiction or the jurisdiction of one of his branches.
17. **Applicable Law:**
The contract and the legal relationship with the Purchaser shall be governed by and construed in accordance with German Law. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply.
18. **Trade Terms:**
If trade terms have been agreed originating from the International Chamber of Commerce (INCOTERMS), the INCOTERMS as set forth in its latest version under www.iccwbo.org/incoterms/preambles.asp shall apply.