

Terms and conditions of performance and payment of Heimerle + Meule GmbH, Pforzheim as at 01.01.2018

I. Scope

1. These general terms and conditions of business apply to the entire business relationship with our customer with regard to our supplies and services of any kind. They also apply to the supplies and services rendered by the customer for us, insofar as such supplies or services involve products containing precious metals. Products containing precious metals and precious metals as defined by these general terms and conditions of business also include copper. We do not recognise the customer's contradictory terms or terms differing from these terms and conditions unless we have explicitly agreed to them.
2. Our general terms and conditions of business also apply to future transactions, even if we do not refer to them in individual cases.
3. These general terms and conditions of business only apply to companies as defined by section 14 of the German Civil Code (BGB), and do not apply to consumers. Therefore, the customer as defined by these general terms and conditions of business can only be an entrepreneur.
4. These general terms and conditions of business do not apply to any and all orders processed in connection with the ordering of goods on our Heimerle + Meule online shop (<https://shop.heimerle-meule.eu/>). The separate general terms and conditions of business for entrepreneurs for the Heimerle + Meule online shop apply to those orders.

II. Offer, conclusion of contract, prices

1. Our offers are non-binding and subject to change, unless they are explicitly described as a binding offer.
2. Any written order confirmation that we may send for orders is authoritative for the relevant order. Our invoice shall be considered an order confirmation where no order confirmation is produced. The customer must raise any objections to the content of the order confirmation without delay; otherwise, the contract will be concluded in accordance with the order confirmation.
3. The prices agreed in accordance with the order confirmation are authoritative. The prices apply ex-works or ex-warehouse, unless agreed otherwise, and do not include packaging, freight, insurance, customs or VAT.
4. In the event of unforeseeable cost increases between conclusion of the contract and performance of the order, for example as a result of an increase in wages or material costs, we are entitled to adjust the prices to reflect the changed circumstances.
5. An agreed (fixed) price shall prevail where the customer has to pay for the proportion of precious metals in euros when products are supplied. In the absence of an agreed fixed price, the daily rate for sales applicable at the time of supply, as published on our website, shall be used to calculate the price of the precious metal. If a precious metal account is kept for the customer, orders shall be settled in accordance with the terms of the precious metal account.

6. The customer must bear the processing costs ('façon') for all precious metal products. These costs are predominantly based on a contractual agreement. In the absence of a contractual agreement, the prices set out in our current price list shall apply.

III. Precious metal accounts

1. We keep weight accounts for the customer in accordance with the following provisions for transactions involving precious metals, rhenium and copper.
2. Precious metal accounts are current accounts for recording debits and credits from purchases and sales, services, in particular recycling, and other additions and disposals (e.g. transfers) by type and volume. Entries are made by weight (purity) in grams.
3. We credit the customer's account accordingly when it buys precious metals.
On the basis of these credit balances, the customer is entitled to the delivery of the credited amount of precious metals.

The customer is also entitled to dispose of credit balances in the precious metal account by instructing us to deliver to a third party the amount of precious metals covered by the credit balances. The transfer to a precious metal account designated by the customer equates to a physical delivery by us. The instruction to deliver precious metals to a third party is deemed fulfilled and the customer's entitlement is deemed satisfied if and insofar as the precious metals are credited to the third party's account.

Precious metals may also be delivered in the form of products containing precious metals, or the relevant party may be able to make use of services where precious metals are used, for example electroplating. The corresponding proportion of precious metals in the products will be debited from the customer's account.

The customer may only dispose of the precious metals credited to its account as a result of the purchase contract if the customer has paid the purchase price or has been granted a corresponding credit line by us.

4. Insofar as the customer makes deliveries to us that contain precious metals, especially in the form of material for reworking for recycling, the precious metals shall be settled via precious metal accounts.
5. Insofar as the customer has not been granted credit, it may only demand that we supply precious metals when the precious metal account has corresponding credit balances and we do not have any counterclaims.
6. Precious metal accounts may only show a negative balance if this is agreed specially with the customer. Unless agreed otherwise, we are entitled to demand at any time that the negative balance be repaid. Instead of deliveries of precious metals, we can also require accounts to be settled by payment of the equivalent amount in euros. The daily rate applicable at the time

that our claim to precious metals becomes due, as published on our website, shall apply.

7. Credit balances on precious metal accounts do not pay interest. Negative balances bear interest.
8. We may cancel erroneous entries in precious metal accounts that are made as a result of a mistake, a typing error or for other reasons by means of a simple entry.
9. The customer shall receive a receipt for all entries in precious metal accounts that shows the initial balance, the entry and the current balance. Amounts are credited and debited on an ongoing basis with a discharging effect.
10. We shall send a balance confirmation to the customer on a regular basis, or at the customer's request. The customer must review the balance confirmation without delay and confirm the accuracy thereof in writing within two weeks, or inform us in writing of the extent to which it objects to the balance confirmation.
11. We are entitled to offset a negative balance in precious metal accounts against a positive balance. We offset balances as we choose, either by converting both balances into euros and offsetting the euro claims, resulting in a residual euro claim, or by converting the positive balance into euros, buying the corresponding amount of precious metals and offsetting them against the negative precious metal balance.

If the customer has credit balances in a precious metal account, we are entitled to offset these balances against any monetary claim we may have against the customer after converting them into euros. We are also entitled to offset a negative balance in a precious metal account against any monetary claim that the customer may have against us after converting said balance.

IV. Delivery and performance

1. Delivery and performance are rendered by us, at the customer's risk, ex-works or ex-warehouse, depending on the shipping route and means of shipment chosen as well as the carrier or freight forwarder chosen. Free delivery to the customer's delivery address means delivery excluding unloading, which the customer must do properly and without delay. Any waiting time shall be charged to the customer.
2. Where transportation on the intended route or to the intended location within the intended time proves impossible or extremely difficult, without any fault on our part, we are entitled to deliver using a different route or to a different location at the customer's expense.
3. Insurance against transport damage and transport losses is only taken out at the customer's express request and at its expense. Any damage must be reported immediately upon receipt of the goods, with the nature and extent of such damage being disclosed in writing without delay. Inbound shipments can only be insured in accordance with Heimerle + Meule GmbH's requirements and a detailed advance notice regarding the shipped goods.
4. The customer is responsible for returning or disposing of packaging, means of protection and/or transportation aids.
5. Goods notified as ready for shipment must be collected immediately. If this does not happen, we are entitled, as we choose, at the expense and risk of the customer, either to send the goods or to store them at our discretion and charge for them without delay.

6. We are entitled to render partial supplies and partial services as long as the residual supplies and services are rendered within the agreed period and this is not unreasonable for the customer.
7. We allow an increased or reduced output of up to 10% for production-related reasons, as long as this is not unreasonable for the customer.
8. For contracts with continuous deliveries, the customer must request approximately equal volumes each month.
9. If, following the customer's individual requests, the contractual volume is exceeded, we are entitled, but not obliged to deliver the excess. We may charge for the excess at the prices applicable to the request or delivery.

V. Periods for delivery and performance, default

1. Periods and deadlines specified by us for delivery and performance are unbinding, unless they have been agreed to be binding. Bindingly agreed deadlines are also not fixed unless they have been expressly designated as such in writing.
2. The period for delivery and performance can be found in the relevant agreements pursuant to the order confirmation. For the period to be complied with, all commercial and technical issues must be clarified and the customer must have fulfilled all obligations incumbent on it, and must in particular have submitted any documents to be procured and made any agreed advance payments. The period for delivery and performance will be prolonged as appropriate if this is not the case.
3. The delivery period is considered to have been met if the delivery item has left the factory or readiness for dispatch has been advised by expiry of the period.
4. The period for delivery or performance will be prolonged as appropriate in the event of measures taken in the context of labour disputes and in the event of unforeseen obstacles beyond our control, insofar as such obstacles delay the completion or delivery of the delivery item. Such unforeseen obstacles include in particular natural disasters of any kind, fires, traffic accidents, kidnappings, terrorism, sabotage and power failures. The same shall apply if these circumstances occur at sub-suppliers. We shall not be responsible for the aforementioned circumstances if they occur during an existing delay. In important cases, we shall notify the customer of the beginning and end of such obstacles without delay.
5. The customer may only withdraw from the contract when periods for delivery or performance are not met if it set a reasonable grace period after the period was not met, under penalty of refusal to accept delivery, and the delivery was not made within the period. This does not apply if we seriously and definitively refuse performance or if particular circumstances justify immediate withdrawal on an exceptional basis.
6. Should we fail to deliver on time, we shall be liable in the case of intent and gross negligence. Our liability is excluded in the case of simple negligence.

VI. Payment, offsetting and retention

1. Unless agreed otherwise, payments are due immediately, without discount.
2. Bills of exchange and cheques are only accepted for the purpose of payment based on an express agreement. Expenses and other costs are to be borne by the customer.
3. We are entitled to only execute or render outstanding supplies and services against advance payment or provision of security if we become aware of circumstances after concluding the contract that are likely to significantly reduce the customer's creditworthiness or that may jeopardise the customer's payment of our outstanding claims from the relevant contractual relationship. In such a case, we may also prohibit the resale and further processing of items delivered subject to reservation of title.
4. The customer may only offset claims against undisputed or legally established counterclaims. The customer may only assert a right of retention if this is based on the same contractual relationship.

VII. Conflict-free material, code of conduct

We only accept conflict-free material for (further) processing in accordance with the provisions of the Conflict-Free Sourcing Initiative (CFSI; see also www.conflictreesourcing.org). This concerns all materials containing gold, tungsten, tin and tantalum. The customer also recognises our 'Heimerle + Meule GmbH policy on the gold supply chain', the code of conduct of Fachvereinigung Edelmetalle e.V. and the 'Heimerle + Meule GmbH policy on laws, human rights, the environment and health' as legally binding (see also www.heimerle-meule.com/de/online-spezial/downloads/).

VIII. Lien

1. The customer hereby grants us a lien on assets of any kind that come into our possession or that we may dispose of within the scope of the business relationship. This includes goods and rights of any and all kinds, as well as the customer's claims against us (resulting from credit balances in precious metal accounts, for example).
2. The lien secures all existing and future, including conditional and time-limited, (statutory) claims on our part against the customer in connection with the business relationship.
3. We shall retain the assets subject to the lien set out in the general terms and conditions of business only if there is a legitimate security interest. We are entitled to realise the assets if the customer fails to meet its obligations on maturity in spite of a reminder setting a reasonable grace period and a warning regarding such realisation in accordance with section 1234(1) BGB.

IX. Reservation of title

1. We shall retain ownership of all goods that we deliver until all – including future – claims, including all ancillary claims, and our balance claims from a current account relationship, in particular claims resulting from precious metal accounts, are satisfied in full. These claims also include bills and cheques receivable and claims arising from current accounts. If liability arising from a bill of exchange is established on our part in connection with payment, the reservation of title shall only expire when the claim against us resulting from the bill of exchange is excluded.

2. If the customer defaults on payment or it becomes apparent that our claims for payment are in jeopardy as a result of the customer's inability to pay, we shall be entitled to demand that the goods be returned based on the reservation of title.
3. The customer must notify us immediately of any attachments or other encroachments by third parties. The customer shall bear all costs that are required to rescind such attachment and to recover the delivery item, unless they can be recovered from the third party.
4. The customer is entitled to dispose of the delivery item in the proper course of business, subject to our permissible revocation of this right for cause. Assignments as security and pledging are in particular not permitted. The customer may only transfer the goods subject to reservation of title to the buyer if the customer is not in default with its obligations towards us.

In the event of resale, the customer hereby assigns all claims from the resale, in particular payment claims but also other claims associated with the sale, to us in the amount of our final invoice amount (incl. VAT), regardless of whether the delivery item was sold on with or without processing.

Provided we have not permissibly revoked this right for cause, the customer is entitled to collect the assigned claims on a trust basis. The resale of claims by way of non-recourse factoring requires our prior consent. For cause, we are entitled to notify garnishees of the assignment of claims on behalf of the customer. The customer's collection authority expires once the garnishee has been informed of the assignment. If the collection authority is revoked, we may demand that the customer notify us of the assigned claims and their debtors, provide all information required for collection, supply the associated documents and inform the debtors of the assignment.

Cause as defined by these regulations is established in particular in the event of payment default, cessation of payment, the initiation of insolvency proceedings, bill protest or grounds which suggest that the customer is overindebted or will imminently become insolvent.

5. If the customer processes the delivery item, this shall always be done on our behalf. We are considered to be a manufacturer as defined by section 950 BGB without any further obligation. If the delivery item is processed together with other items that do not belong to us, we shall acquire joint ownership of the new item in the ratio of the value of the invoice amount to the purchase price of the other processed goods. Otherwise, the provisions applicable to the delivery item shall likewise apply to the item resulting from the processing.
6. If the delivery item is combined, mingled or intermixed with the customer's movable items such that the customer's item is seen as the principal item, the customer hereby transfers to us its title to the whole item in the ratio of the value of the delivery item to the value of the other combined, mingled or intermixed items. If the delivery item is combined, mingled or intermixed with the movable items of a third party such that the third party's item is seen as the principal item, the customer hereby assigns to us its claim to remuneration against the third party in the amount corresponding to the final invoice amount for the delivery item.

The new item resulting from the combining or mingling, the (co-)ownership rights due or transferred to us in the new item and the remuneration claims assigned to us in accordance with the previous paragraph serve to secure our claims in the same way as the delivery item itself.

7. The customer is obliged to insure the goods subject to reservation of title adequately against fire, breakage, water damage, theft and burglary at its expense and in our favour. Any insurance claims arising in the event of loss are hereby assigned to us. We accept this assignment.
8. Insofar as the reservation of title or the assignment of claims is invalid or unenforceable due to mandatory foreign regulations, the security right equivalent to the reservation of title or assignment of claims in such region shall be deemed to have been agreed. If the customer's involvement is required for this purpose, it must take all measures required to establish and maintain the security right.

X. Tools and special equipment

1. Tools and special equipment that we manufacture for the customer's orders shall remain our property, even if the customer has paid the costs of such tools or equipment in part or in full. In the event of premature termination of the order, we shall be entitled, at our discretion, to transfer the tools and special equipment to the customer against payment of the total production costs or to reimburse the customer and cancel the portion of the costs corresponding to the proportion of the performance actually rendered. In such a case the tools and special equipment shall remain our property.
2. If we have rendered the services resulting from an order in full where the tools or special equipment were produced for this order, or if the customer has not accepted parts manufactured using this equipment for three years, we shall be entitled to dispose of these items without restriction.

XI. Material defects

1. The customer must inspect every delivery on receipt with regard to completeness and damage to packaging. Any objections must be sent to us in writing without delay. The customer must arrange for a statement of facts to be drawn up by the shipping agent.
2. The customer is obliged to inspect the delivery item immediately and notify us of any obvious defects in writing without delay. The obligation to inspect and report any defects also includes any discrepancies in volume and identity. Hidden defects must be reported in writing immediately after they are discovered. The notification of defects must include in particular data relating to the delivery item: delivery note number, delivery date, order confirmation number and a detailed description of the defect and the resulting damage. The customer is obliged to return the delivery item for which defects have been reported to us at our request.
3. The delivery item delivered by us and for which defects have been reported must not be further processed or installed from the time of the obligation to notify defects pursuant to no. 2. Otherwise, the customer's claims for defects will be void.

4. If we are responsible for a defect, we are entitled to effect supplementary performance by, at our discretion, rectifying the defect or delivering a faultless item. Delivery items that we replace in the context of subsequent delivery shall become our property. Subsequent performance does not establish a new limitation period. If we refuse to effect subsequent performance, or if it fails or is unreasonable for the customer, the customer may assert further rights, and in particular demand a discount or withdraw from the contract.
5. The regulations set out in this section for obligations to notify defects and material defects in delivery items apply accordingly to services provided by us.

XII. Compensation

1. We are liable in the event of intent and gross negligence. For simple negligence, we shall only be liable in the event of the violation of material contractual duties that arise from the nature of the contract, or the violation of which jeopardises achievement of the contractual purpose. Even in this case, compensation is limited to foreseeable damage typical for the contract. Otherwise the customer's claims for compensation are excluded for slight negligence, irrespective of their legal grounds.
2. The above limitation of liability does not apply to claims arising from the Product Liability Act, in the event of death, physical injury or damage to health. In the event of claims for compensation resulting from material defects, the limitation of liability also does not apply if we have maliciously concealed a defect or assumed a guarantee for the quality of an item.

XIII. Limitation period

1. Unless determined otherwise in the following, the general limitation period for the customer's claims resulting from material defects and defects of title is one year from delivery or service provision. This limitation period also applies to the customer's contractual and extracontractual claims for compensation based on a defect in the goods.
2. The statutory limitation periods apply
 - to claims for compensation arising from death, physical injury or damage to health;
 - to liability in accordance with the Product Liability Act;
 - insofar as we have maliciously concealed a defect;
 - insofar as we have assumed a guarantee;
 - insofar as a structure is involved or an item is involved that has been used for a structure in line with its common usage and caused the structure's deficiency;
 - to claims for supplier recourse in the event of final delivery to a consumer (section 479 BGB).

XIV. Recycling and purchases

The following provisions also apply to recycling (recovery of precious metal) and purchases of products containing precious metals.

1. Nature

1.1 The customer must inform us in writing before conclusion of the contract of the dangerous nature of (e.g. toxic, corrosive, explosive highly flammable, radioactive components) and of any harmful or irritating components in (e.g. chlorine, bromine, mercury, arsenic, selenium, tellurium, cadmium, beryllium, etc.) the provided material (material for reworking). Such material may only be provided with our prior written consent. The material for reworking must be packaged properly in consideration of any instructions we may grant.

1.2 The customer shall ensure that the goods satisfy the requirements set out in Directive 2011/65/EU (RoHS). The supplier shall also ensure that the substances contained in the goods and their use(s) either are or will be registered or that there is no registration obligation pursuant to Regulation (EC) No 1907/2006 (REACH Regulation) and that authorisation is in place in accordance with the REACH Regulation, where required. The supplier shall also produce a safety data sheet in accordance with Annex II of the REACH Regulation and provide this to Heimerle + Meule, where required. If goods are delivered that are classified as dangerous goods in accordance with international regulations, the supplier shall inform Heimerle + Meule of this on order confirmation at the latest.

1.3 The customer is liable for all damage caused by the dangerous or harmful nature of the material for reworking where we were not informed of such.

1.4 We reserve the right to increase processing costs and extend return/purchasing periods where particular properties of the material for reworking that we were not aware of on acceptance of the order entail additional expenses.

2. Delivery/transfer of risk

The customer shall bear the costs and the risk of the delivery of the material for reworking until handover to us or the receiving location specified by us. If we have agreed with the customer for the material to be picked up by Heimerle + Meule, risk is transferred to us on handover to us or the shipping agent engaged by us.

3. Statement

We shall melt the material for reworking into homogeneous ingots. We shall determine the weight and content of the precious metals by taking samples from this process. We shall prepare a statement on the result of this investigation, about which we shall inform the customer. The statement shall become binding if the customer agrees with it or does not object to it in writing within three working days after receipt of the statement. Once the statement is binding, we are entitled to further process the material for reworking. We may provide information in advance relating to the result we have determined if the customer so requests in individual cases. In such a case, the advance information shall be considered a statement as defined by this provision.

3.

4. Settlement via precious metal accounts

The weight and content of the precious metals determined on the basis of the statement shall be credited to the customer's precious metal accounts. Depending on the agreement made, the customer shall be entitled to delivery of the corresponding amount of precious metals or, in the case of a purchase contract, entitled to payment of the purchase price for the precious metals.

5. Remuneration/offsetting

The customer shall owe us the remuneration set out in the invoice for the recycling. We are entitled to offset the remuneration due to us for the recycling against the customer's claims against us, and to assert rights of retention.

6. Purchases

6.1 If we conclude a purchase contract with the customer under which we will buy precious metals from the customer, a price agreed with the customer shall prevail; in the absence thereof our daily rate shall apply to purchases. This also applies if the precious metals purchased are only obtained in the recycling process.

6.2 The customer is obliged to provide us with the purchased precious metals in full if a purchase contract is concluded. If the customer does not provide the purchased precious metals in full, we may demand, as we choose, that the customer deliver to us the missing amount of precious metals or, if we have already paid the purchase price to the customer, that the customer return the excess amount paid corresponding to the missing amount of precious metals to us. We may also assert claims for compensation after setting an appropriate deadline. Such damage may in particular be calculated in such a manner that we otherwise receive the precious metals owed to us by the customer and assert a higher purchase price as damage. The above provisions also apply in particular if it transpires after the recycling process that the precious metal content achieved does not correspond to the content that we determined as the purchased amount before the recycling process.

XV. Electroplating

The following provisions also apply to electroplating:

1. Where goods are provided, the surface thereof must be free from fats, oils, silicone and silicone-like substances when delivered. The surface must be uncoated, free of cracks and non-porous, and free from stains, scales and other oxides. It must be possible to remove all inorganic and organic surface coatings using common surface engineering practices.

Jewellery containing stones must be provided such that it can be electroplated without stains developing and without the stones falling out. If this requirement is not met, we cannot accept any liability for the loss of or damage to the stones.

2. The customer is responsible for ensuring that agreed or specified properties relating to material, dimensions and surface are complied with. If the above requirements are not met, we cannot be held liable in this respect.

3. We do not inspect the goods in terms of compliance with the requirements specified in nos. 1 and 2. The parts to be coated shall only be inspected for obvious deformations on receipt on a sample basis.
4. We are authorised to undertake test coatings in accordance with the contractual agreements. If parts become unusable in this process and we are not responsible for this, this shall not establish any claims on the part of the customer.
5. The required tests may result in the destruction of the part. The scope of the destructive test must be contractually defined. The tested parts are invoiced and delivered separately.
6. We are liable for intent and gross negligence. In the case of simple negligence, our liability is limited to no more than 15 times the remuneration owed (excluding the precious metals).
7. If precious metals, auxiliary materials and other items belonging to us are processed, combined or intermixed with parts belonging to the customer that have been transferred to us for processing, we shall acquire joint ownership or sole ownership pursuant to section 947 BGB of the new item in the ratio of the value of our performance to the value of the customer's parts at the time of processing, combining or intermixing.

If items are processed, combined or intermixed such that the customer's part is seen as the principal item, it shall be agreed that the customer will transfer co-ownership to us on a pro rata basis.

Should we acquire ownership of the item in accordance with section 947 BGB or section 950 BGB, we shall retain ownership of this item until all existing claims resulting from previous contracts with the customer have been settled.

Otherwise, the regulations under IX. on the reservation of title shall apply accordingly. The delivery item specified therein shall be replaced by the reserved property in accordance with the provisions set forth herein.

XVI. Place of performance, place of jurisdiction, applicable law

1. The place of performance for delivery, payment and all other obligations resulting from the contractual relationship is Pforzheim, unless agreed otherwise.
2. The place of jurisdiction for all legal disputes arising from the contractual relationship and in relation to its establishment and effectiveness is the registered office of our company, for both parties, as long as the customer is a merchant or legal entity under public law. We may also bring an action at the registered office of the customer, at our discretion.
3. The contractual relationship is subject to German law. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.