

## 1. Scope:

- 1.1 All offers, deliveries, services and sales transactions concluded between the Customer and Schöne Edelmetaal B.V., Meeuwenlaan 88, 1012 JK Amsterdam ("Schöne") are carried out solely on the basis of the General Terms and Conditions printed below. Any inconsistent, diverging or additional terms and conditions of the Customer shall not apply and are explicitly rejected by Schöne, unless Schöne expressly accepts such terms and conditions. Schöne's silence signifies Schöne's rejection of the Customer's terms and conditions.
- 1.2 All Schöne's general terms and conditions can be downloaded at any time from <http://www.schone.nl>.

## 2. Offer and contract:

Schöne's offers are subject to change without notice. Any contract requires Schöne's order acknowledgement in writing, whereby the execution of an order implies acceptance. Any amendment, supplement or cancellation of a contract or of any of the provisions of these terms and conditions shall be valid only if made in writing. Statements or notifications by the Customer after conclusion of contract shall only be effective if submitted in writing and acknowledged in writing by Schöne.

## 3. Prices and payment:

- 3.1 The prices stated in the order acknowledgement are applicable. Unless otherwise agreed, these prices apply ex works and do not include packing, insurance, freight, postage and value-added tax.
- 3.2 Insofar as cost increases occur after conclusion of contract up until execution of the order, which were unforeseeable for Schöne and for which Schöne is not at fault, e.g. as a result of an

increase in material costs or any introduction or increase of taxes or duties, Schöne shall be entitled to adjust the prices to provide for the changed circumstances.

- 3.3 Unless otherwise agreed, metals and precious metals will be charged at the price valid at the time of delivery.

- 3.4 Checks and bills will only be accepted as payment after Schöne's explicit agreement and subject to receiving actual payment. Any respective expenses and costs shall be borne by the Customer.

## 4. Offsetting amounts and retention:

The Customer may only offset counterclaims that are undisputed or have been recognized by declaratory judgment. The Customer may only assert a right of retention if it is based on the same contract; this restriction shall not apply if the counterclaims of the Customer are undisputed or have been recognized by declaratory judgment.

## 5. Delivery, insurance and passing of the risk:

- 5.1 The delivery and refining times are without obligation and are only considered to be approximate, unless they were agreed with binding effect. Even so, these are nonetheless not fixed dates, unless they were expressly agreed.

- 5.2 The risk passes to Schöne's Customer no later than the moment from the dispatch of the delivery ex works, even if prepaid delivery was explicitly agreed. If Schöne chooses the type of dispatch, the route or the carrier, Schöne shall only be liable if Schöne is grossly at fault in the selection concerned.

- 5.3 If Schöne dispatches the goods on behalf of the Customer, Schöne shall be entitled to take out reasonable transport

insurance on behalf and at the expense of the Customer, at least to the amount of the invoice value of the goods.

- 5.4 Schöne is entitled to execute partial shipments to a reasonable extent and to invoice these separately.

- 5.5 Depending on the type of product, deviations of up to 10% in the ordered weights are permitted upon delivery both as regards the total quantity ordered and the individual partial shipment. In the case of fine metals in commercial form, the exact quantities ordered will be dispatched.

- 5.6 If delivery periods are exceeded, the Customer may only rescind the contract if he has granted Schöne a reasonable additional period with a prior notice of rejection beforehand and if the delivery is not effected within the additional period.

- 5.7 If Schöne is in default with regard to the delivery, Schöne shall only be liable for the damage caused to the Customer by the default in the event of intent or gross negligence on the part of Schöne.

## 6. Refinery, recovery:

- 6.1 Delivery of materials

The place of delivery for the materials to be refined is Schöne's factory/office at the address specified in No. 1.1, unless otherwise agreed. The Customer shall bear the costs and the risk of delivery, even if Schöne provides a means of transport. The Customer is responsible for proper transport and packaging as well as compliance with any instructions given by Schöne and statutory or official regulations. The delivery of radioactive, mercury-containing or explosive material is prohibited. The delivery of any other hazardous materials for refining, e.g. toxic, caustic, highly inflammable materials for refining as well as materials with

hazardous contents, e.g. chlorine, bromine, fluorine, arsenic, selenium, tellurium, bismuth, beryllium etc., is permitted only with Schöne's prior written consent. The Customer undertakes to observe the relevant regulations on the transport of waste based on European and Dutch waste legislation. The Customer is liable for damage arising as a result of incorrect or incomplete marking.

6.2 **Settlement reservation**

Schöne reserves the right to increase the processing costs contained in the offer or the order acknowledgement and to extend the return delivery/purchasing periods in the event that special qualities of the material, of which Schöne was unaware upon acceptance of the order, entail an additional expense.

6.3 **Liability for goods to be refined**

For deficiencies in the treatment or the storage of the materials to be refined, Schöne shall only be liable as specified in Nos. 8 and 9. For losses of materials arising without intent or gross negligence, Schöne shall only be liable if these are covered by Schöne's insurance (for fire and theft), however, the total amount of such claims shall be limited to the value at the time of delivery of the materials delivered. All other risks shall be borne by the Customer. In particular, the Customer shall be liable for all damage attributable to the hazardous nature of the material to be refined (cf. No. 6.1).

6.4 **Settlement and return delivery**

An invoice shall be issued on the basis of the weights and contents determined by Schöne before refining. The invoices will be binding, unless these are objected to by the Customer in writing within two weeks upon receipt. Schöne shall keep appropriate sample material in reserve with regard to this period.

Schöne shall be entitled to allocate the material for refining after it has been weighed and the workmanship has been examined.

6.5 The metals and precious metals recovered through refining will be credited to the Customer's weight accounts; insofar as a purchase was agreed, the ownership thereof shall be transferred to Schöne upon the first part payment, unless otherwise agreed in writing.

**7. Precious metal trading and precious metal transfer accounting:**

7.1 Orders placed by the Customer over the telephone only become binding upon Schöne's written confirmation. The damage caused as a result of transmission faults, misunderstandings or errors in telephonic communications with the Customer or with third parties shall be borne by the Customer, subject to Schöne's fault, which can be demonstrated.

7.2 Schöne may cancel supplied credit notes as a result of an error, a spelling mistake or for any other reason, without a corresponding order being placed, by making a simple entry.

**8. Defects of quality, limitation:**

8.1 The specifications agreed in writing with the Customer shall apply to the quality of Schöne's products; in the absence of specifications agreed in writing, the particulars provided in Schöne's technical data sheets, specifications or drawings shall apply. Supplementary or deviating agreements on the quality must be made in writing. Any suitability of the product supplementing or deviating from the agreed quality for the presupposed or customary use shall not be accepted in any way whatsoever.

8.2 Schöne must be promptly notified of any defects in writing,

however, no later than 5 working days upon receipt of the goods (in the case of hidden defects immediately, yet no later than 5 working days after discovery). If the Customer fails to notify Schöne, the goods shall be deemed accepted.

8.3 In case of timely notification and in the case the goods are defective, Schöne shall, at the Customer's request, replace or rectify such goods (subsequent performance). If such subsequent performance fails, the Customer shall have the right to proportionally reduce the purchase price or to rescind the contract. A right to claim damages exists only to the extent set out in No. 9. The Customer's claims based on defects expire one year after delivery of the goods; the statutory limitation periods apply nonetheless:

- in the event of liability as a result of wilful intent or gross negligence or the intentional concealment of a defect;
- for damages resulting from death, physical injury or impairment of health caused by Schöne, Schöne's legal representatives or Schöne's vicarious agents through wilful intent or negligence;
- in case of recourse by the Customer based on regulations on the purchase of consumer goods.

**9. Damages:**

9.1 Subject to timely notification as expressed in article 8.2 and unless expressly provided for otherwise, Schöne shall be liable in the event of wilful intent or gross negligence on the part of Schöne itself or of Schöne's representatives or agents in accordance with statutory provisions; this shall also apply in the event of any culpable violation of major contractual obligations (major contractual obligations are primarily those that must be fulfilled to enable a

proper contractual performance or which substantially determine the nature of the contract and on which the contractual partner may be reliant). In the absence of any wilful or grossly negligent breach of contract, Schöne's liability for damages shall be limited to a compensation for typical, foreseeable damage, in conformity with this paragraph. Its liability in respect of any culpable breach leading to death, physical injury or impairment of health or in respect of any liability under product liability law shall be unaffected. Unless expressly agreed otherwise above or elsewhere, Schöne's liability is excluded. Schöne shall never be liable for immaterial damage/loss, business damage/loss, indirect damage/loss, loss of profit or other consequential damages.

<sup>9.2</sup>The restrictions set out in paragraph 1 also apply to Schöne's legal representatives and agents to the extent that claims may not be directly laid against them.

#### **10. Product information, guarantees:**

Schöne's details in product brochures or other advertisements about Schöne's products, equipment, plant and methods are based on Schöne's research and Schöne's experience in the field of applied engineering and are merely recommendations. No claims based on defects, warranted qualities or warranted use can be inferred from these details. Schöne reserves the right to make technical modifications in the course of Schöne's product development. The Customer must verify the suitability of Schöne's products and processes for the intended use or application at his own responsibility. This also applies to the protection of third-party property rights as well as to

applications and methods. The properties of samples and specimens are binding only if these have been expressly agreed in order to define the quality of the goods. Information on the quality and durability and other particulars are warranted only if these are agreed and designated as such.

#### **11. Retention of title:**

<sup>11.1</sup>The goods sold shall remain Schöne's property until full payment of all current and future claims arising under or in connection with the entire business relationship with the Customer, irrespective of the legal ground. Hence, this includes in particular any claims to the performance of the contract, to damages based on default, non-performance or the breach of other contractual or pre-contractual duties and claims based on the law of torts and the right to satisfaction.

<sup>11.2</sup>Retention of title also applies to new products manufactured from Schöne's products; such manufacturing will be undertaken by the Customer on Schöne's behalf, however, always at the Customer's own risk and for his own account. The above also applies where Schöne's products are combined, mixed with products of third parties, without prejudice to the right of such third parties to part from co-ownership. In so far as the applicable law does not allow for the retention of title to processed, combined and/or mixed products, as described above, the Customer shall be considered to have transferred the title to these products to Schöne by the mere fact of such processing combining, and/or mixing.

<sup>11.3</sup>The Customer is entitled to process and sell Schöne's products within the scope of the regular conduct of his business. The Customer may, in the

ordinary course of his business operations, resell any goods which are subject to Schöne's retention of title. The Customer hereby assigns to Schöne all his claims arising from such resale up to the amount of the value of the reserved goods at the time of the resale. The Customer shall be authorized to collect payments for claims from such resale as long as he duly fulfils his obligations in respect of Schöne. If so requested by Schöne, the Customer shall advise his customers of such assignment of rights and provide Schöne with the information and documents necessary to enforce Schöne's rights in respect of these parties.

<sup>11.4</sup>The Customer is obliged to insure the reserved goods at his own expense and to a reasonable extent against fire, water damage, burglary and theft. The Customer hereby assigns to Schöne any possible claims against the insurance up to the amount of the value of the reserved goods at the time of the occurrence of the insured event.

<sup>11.5</sup>The Customer is not authorized to dispose of the reserved goods in any manner other than as stated above. In particular, the Customer may not extend the reserved goods as a loan or assign them as collateral, pledge or sell them. Access by third parties to goods and receivables belonging to Schöne shall be notified without undue delay in writing. If so requested by Schöne, the Customer shall provide all the information required with regard to the stocks of the goods belonging to Schöne and on the receivables assigned to Schöne. At Schöne request, the Customer shall also mark the goods belonging to Schöne as Schöne's property and notify his buyers of the assignment.

<sup>11.6</sup>Should the Customer be in

default of payment, Schöne shall be entitled to revoke the Customer's authorization to resell the reserved goods and to collect the receivables assigned to Schöne, to disclose the assignment of the receivables and/or to demand the provisional surrender of the goods belonging to Schöne at the expense of the Customer, even without rescinding the purchase contract and without granting any period of grace.

11.7 The receivables assigned on the basis of paragraphs 2 to 5 serve to secure all receivables under paragraph 1.

11.8 In the event that the value of the collateral exceeds Schöne's claims against the Customer by more than 10 percent, Schöne shall be obliged to release the collateral in excess of said limitation.

## 12. Rights in the event of a deterioration in financial circumstances:

If, upon conclusion of the contract, it becomes evident that Schöne's claim to a counter-performance is jeopardized as a result of the Customer having insufficient funds to pay, all claims in connection with the agreement or any other agreement with Schöne will become immediately due and payable and Schöne shall have the following rights, without further notice, or judicial intervention and without prejudice to any other rights Schöne may exercise against the defaulting Customer:

- Schöne can immediately assert claims for which a bill of exchange was presented.
- Schöne is entitled to prohibit the Customer from reselling the goods and - subject to further rights under the reservation of title - to reclaim any unpaid goods at the Customer's expense.
- All metals and precious metals

on a weight account of the Customer serve to collateralize all of Schöne's claims against the Customer. Schöne is only obliged to surrender metals or precious metals to the extent that their counter-value exceeds the total amount of all of Schöne's claims.

• Should the Customer be in default of payment, Schöne shall be entitled upon a respective written notice thereto to purchase any metals and precious metals entered on a weight account of the Customer in a quantity equivalent to all of Schöne's pecuniary claims and to offset Schöne's pecuniary claims against the pecuniary claim of the Customer based on such purchase. The exchange rate shall be the rate applicable on the date of purchase.

• Metal and precious metal liabilities of the Customer may be settled by Schöne by selling at the current daily price. The outstanding pecuniary claim may be offset against any credit balance of the Customer.

## 13. Data protection:

13.1 The Customer's data will be stored in order to document the transaction for commercial and legal purposes.

13.2 Data will only be disclosed to third parties if necessary for the performance of the contract. In this connection, the transfer of the Customer's data to Schöne's credit insurer is necessary for the performance of the contract. The Customer may at any time request information from the data stored.

## 14. Weight accounts for metals and precious metals

14.1 Schöne keeps individual weight accounts for each Customer (hereinafter also called account holder) and for each (precious) metal. The quantities of (precious) metal of the various account holders are not individually stored.

14.2 An account holder is co-owner of the total stock of a (precious) metal in accordance with the weight entered into his account. In the case of a sale or a purchase of (precious) metals, the ownership of such (precious) metals is transferred from the moment the transaction has been processed in the respective weight account.

14.3 Weight accounts may only show a debit balance pursuant to a special agreement with the respective account holder. Without prejudice to a differing written agreement, Schöne shall be entitled to claim prompt regularization of any debit balance at any moment.

14.4 The weight account may be ended at any moment by either party for a justified reason without observing a term of notice. Such a justified reason exists in the event that facts occurred as a result of which the cancelling party cannot reasonably be expected to keep the weight accounts having considered all the facts and circumstances of the individual case and having considered the parties' interests in the agreement. Justified reasons may include the infringement of essential contractual obligations or imminent insolvency.

14.5 In the case Schöne cancels an account holder's weight account, the title to the (precious) metals of the account holder, as entered into the weight account, shall be transferred to Schöne in full. Schöne undertakes to pay the account holder for the value of the respective (precious) metals at the current metal price.

## 15. Invalid provisions

If at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any applicable jurisdiction, neither the legality, validity or enforceability of such provision

under law of any jurisdiction shall in any way be affected or impaired thereby. Such provisions are replaced by provisions legally valid and enforceable in accordance with the purpose intended. Invalidity or unenforceability of any part of these provisions does not invalidate the remaining provisions.

**16. Place of jurisdiction, place of performance and applicable law**

<sup>16.1</sup> The place of performance for delivery and payment is Amsterdam, the Netherlands, for both parties. For Customers, the courts of Amsterdam, the Netherlands, have exclusive jurisdiction. However, Schöne is entitled to bring legal action at the Customer's place of general jurisdiction or at the place of jurisdiction of a branch.

<sup>16.2</sup> The contractual relationship is governed solely by the laws of the Netherlands. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.