



# General Terms and Conditions of Delivery of BEDRA GmbH

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**BEDRA GmbH**  
Untere Talstrasse 61  
71263 Weil der Stadt

Postfach 1140  
71255 Weil der Stadt

Tel.: +49 (0) 70 33 69 36-0  
Fax: +49 (0) 70 33 6936-50  
E-Mail: info@bedra.de

## I. General provisions

### Sec. 1 Scope

- (1) All deliveries, services and offers of BEDRA shall be based exclusively on these General Terms and Conditions of Delivery. They shall constitute an integral part of all contracts concluded between BEDRA and its contractual partners (hereinafter also referred to as "Customers") for the deliveries or services offered by them. They shall also apply to all future deliveries, services and offers to the Customer, even if they are not separately agreed upon again.
- (2) These General Terms and Conditions of Delivery shall also apply to goods delivered and services rendered to BEDRA by the Customer, to the extent that the supply of precious metals is concerned, including in particular for the purpose of recycling. The purchase of other products shall be governed by our General Terms and Conditions of Purchase.
- (3) Terms and conditions of the Customer or third parties shall not apply, even if BEDRA does not object to their validity separately in each individual case.
- (4) These General Terms and Conditions of Delivery shall only apply to entrepreneurs, legal persons under public law or special funds under public law. They shall not apply to consumers.

### Sec. 2 Offers and conclusion of the contract

- (1) All offers of BEDRA are non-binding and subject to confirmation, unless they are expressly designated as binding or contain a specific deadline for acceptance.
- (2) The legal relationships between BEDRA and the Customer shall be governed solely by the contract concluded, including these General Terms and Conditions of Delivery.
- (3) Any modifications and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing to be effective.
- (4) Any information provided by BEDRA concerning the subject of the delivery or service (e.g. weights, dimensions and technical specifications) as well as any visual representations of the same (e.g. drawings and pictures) shall only be approximate, unless the usability for the contractually intended purpose requires an exact match. They shall not constitute warranted characteristics, but merely descriptions or designations of the delivery or service. Customary deviations and deviations that are made on account of legal requirements or constitute technical improvements are permitted to the extent that they do not affect the usability for the contractually intended purpose.

### Sec. 3 Prices and payment

- (1) The prices shall apply to the scope of delivery and service specified in the order confirmations. Any additional or special services shall be subject to a separate charge. The prices are quoted in EUR ex works, excluding packaging, shipping and insurance, value-added tax at the statutory rate, customs duties for export deliveries as well as fees and other public charges.
- (2) To the extent that the agreed prices are based on BEDRA's list prices and the delivery is not to be made until more than four months after conclusion of the contract, BEDRA's list prices effective at the time of delivery shall apply (in each case, less any agreed percentage or fixed discount).



(3) Invoice amounts shall be payable immediately without any deductions, unless otherwise agreed in text form. The date of receipt of the payment by BEDRA shall be authoritative for the timeliness of the payment. Payment by cheque shall be excluded, unless agreed separately on a case-by-case basis. If the customer fails to make the payment by the due date, 9% interest p.a. shall be charged on the outstanding amounts from the due date; in the event of default, the right to assert claims for higher interest and further claims shall remain unaffected.

(4) Offsetting of claims against the Customer's counterclaims or retention of payments is only permitted if the counterclaims are uncontested or legally established or arise from the same order under which the delivery in question was made.

(5) BEDRA is entitled to claim advance payment or provision of security for outstanding deliveries or services if it becomes aware of any circumstances after conclusion of the contract which are likely to significantly reduce the Customer's creditworthiness or which jeopardise the payment of BEDRA's outstanding claims by the Customer from the respective contractual relationship (including from other individual orders under the same framework contract).

#### **Sec. 4 Delivery and delivery period**

(1) Deliveries are made ex works.

(2) The deadlines and dates for deliveries and services indicated by BEDRA shall always only be approximate, unless a fixed deadline or fixed date has been expressly promised or agreed. If shipping has been agreed, the delivery deadlines and delivery dates refer to the time of handover to the forwarder, carrier or other third party commissioned to carry out the transport.

(3) Notwithstanding its rights arising from the Customer's default, BEDRA may demand from the Customer an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period during which the Customer fails to meet its contractual obligations towards BEDRA.

(4) BEDRA is not liable for impossibility of delivery or for delays in delivery, to the extent that they have been caused by force majeure events or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties of material or energy supply, delays in transport, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties obtaining any necessary official permits, administrative measures, non-delivery or incorrect or untimely delivery by suppliers) that are not attributable to BEDRA. To the extent that such events make the delivery or performance substantially more difficult or impossible for BEDRA and the hindrance is not only of a temporary nature, BEDRA is entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or performance deadlines shall be extended or the delivery and performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If acceptance of the goods or services cannot be reasonably expected of the Customer as a result of the delay, the Customer may withdraw from the contract by immediately submitting a written declaration to BEDRA.

(5) BEDRA is only entitled to make part deliveries if

- the part delivery can be used by the Customer for the contractually intended purpose,
- the delivery of the remaining goods ordered is guaranteed and
- the part delivery does not cause any substantial additional expenses or costs for the Customer (unless BEDRA agrees to bear such costs).

(6) If BEDRA is in default with a delivery or service or if a delivery or service becomes impossible, no matter for what reason, BEDRA's liability for compensation shall be limited in accordance with Sec. 8 of these General Terms and Conditions of Delivery.

#### **Sec. 5 Place of performance, shipping, packaging, passing of risk**

(1) The place of performance for all obligations arising from the contractual relationship shall be Weil der Stadt, unless otherwise specified.

(2) The shipping method and type of packaging are subject to BEDRA's reasonable discretion.

(3) The risk shall pass on to the Customer no later than upon handover of the delivery item (with the start of the loading process being authoritative) to the forwarder, carrier or other third party commissioned to carry out the shipment. This shall also apply if part deliveries are made or if BEDRA has undertaken to render other services (e.g. shipping). If the shipment or handover is delayed due to circumstances attributable to the Customer, the risk shall pass on to the Customer from the day on which the delivery item is ready for shipment and BEDRA has notified the Customer thereof.

(4) Any storage costs after passing of risk shall be borne by the Customer.

(5) As a rule, BEDRA will insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at its own expense.



## **Sec. 6 Warranty, material defects**

- (1) The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. This period shall not apply to compensation claims by the Customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by BEDRA or its vicarious agents, which shall in each case expire in accordance with the statutory provisions. The statutory limitation period shall also apply in the cases that fall under Sec. 438 (1) No. 2 and Sec. 634a (1) No. 2 BGB [German Civil Code] and to claims under the Product Liability Act.
- (2) The delivery items shall be carefully inspected immediately after delivery to the Customer or the third party designated by the Customer. They shall be deemed to have been approved by the Customer with regard to visible defects or other defects that would have been recognisable on immediate, careful inspection, unless BEDRA receives a notice of defects in text form within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Customer, unless BEDRA receives a notice of defects within seven working days after the defect has become apparent. At BEDRA's request, a contested delivery item shall be returned to BEDRA carriage paid. If the notice of defects is justified, BEDRA shall reimburse the costs of the most favourable shipping route; this shall not apply if such costs increase because the delivery item is located at a place other than the place of the intended use.
- (3) In the event of material defects of the delivery items, BEDRA is initially obliged and entitled, at its option, to remedy the defect or deliver a defect-free substitute item within a reasonable period. In the event of failure, i.e. impossibility, refusal or unreasonable delay of the defect remediation or substitute delivery, the Customer may withdraw from the contract or reduce the purchase price by a reasonable amount.
- (4) If a defect is based on BEDRA's fault, the Customer is entitled to claim compensation under the conditions specified in Sec. 8.
- (5) The warranty shall expire if the Customer alters the delivery item or has it altered by third parties without BEDRA's consent and remediation of the defect becomes impossible or unreasonably difficult as a result. In any case, the Customer shall bear the additional costs of remedying the defect resulting from the alteration.

## **Sec. 7 Property rights**

- (1) BEDRA warrants in accordance with this Sec. 7 that the delivery item is free from industrial property rights or copyrights of third parties. Each Party shall inform the other Party in writing without delay if any claims are asserted against it based on the infringement of such rights.
- (2) In the event that the delivery item infringes an industrial property right or copyright of a third party, BEDRA shall, at its option and expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or acquire the right of use for the Customer by entering into a licence agreement with the third party. If BEDRA fails to do so within a reasonable period, the Customer is entitled to withdraw from the contract or reduce the purchase price by a reasonable amount. Any claims for compensation by the Customer shall be subject to the limitations set forth in Sec. 8 of these General Terms and Conditions of Delivery.

## **Sec. 8 Liability for compensation based on fault**

- (1) BEDRA's liability for compensation, no matter on what legal grounds, in particular arising from impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited in accordance with the provisions of this Sec. 8, to the extent that such liability depends on fault.
- (2) BEDRA is not liable in the event of slight negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless material contractual obligations have been breached. Material contractual obligations include the duty of timely delivery of the delivery item free from legal defects and those material defects that more than insignificantly affect its functionality or usability, as well as duties of consultation, protection and care which are intended to enable the Customer to use the delivery item as agreed or are aimed at protecting the life and limb of the Customer's personnel or its property against significant damage.
- (3) To the extent that BEDRA is liable for compensation on the merits in accordance with Sec. 8 (2), this liability shall be limited to damage which was foreseeable to BEDRA upon conclusion of the contract as a possible consequence of a breach of contract or should have been foreseeable when applying due care. Furthermore, indirect and consequential damage resulting from defects of the delivery item shall only be eligible for compensation to the extent that such damage can be typically expected when using the delivery item as intended.
- (4) The foregoing exclusions and limitations of liability shall apply to the same extent in respect of BEDRA's executive bodies, legal representatives, employees and other vicarious agents.
- (5) To the extent that BEDRA provides technical information or acts in an advisory capacity and such information or advice is not part of the contractually agreed scope of services owed by it, this shall be done free of charge and excluding any liability.
- (6) The limitations set forth in this Sec. 8 shall not apply to BEDRA's liability for warranted characteristics, for injury to life, limb or health or under the Product Liability Act.



### **Sec. 9 Retention of title**

(1) BEDRA retains the title to all delivery items until receipt of all payments arising from the business relationship with the Customer, including any current account balance claims (in particular from weight accounts). In the event of breach of contract by the Customer, in particular default of payment, BEDRA is entitled to recover the delivery item. The recovery of the contractual item shall constitute withdrawal from the contract. BEDRA is entitled to realise the contractual item after recovery. The realised proceeds shall be set off against the amounts payable by the Customer – deducting a reasonable amount for the cost of realisation.

(2) The Customer is obliged to handle the contractual item with care and sufficiently insure it against fire, water and theft at replacement value at its own expense.

(3) In the event of seizures or other interventions by third Parties, the Customer shall notify BEDRA in writing without delay.



(4) The Customer is entitled to resell the contractual item in the ordinary course of business. However, it shall hereby assign to BEDRA all claims against its purchasers arising from the resale in the amount of the invoice total (incl. value-added tax) of BEDRA's claim, irrespective of whether the contractual item was resold without or after processing. The Customer remains entitled to collect this claim also after the assignment. BEDRA's right to collect the claim itself shall remain unaffected. However, BEDRA undertakes not to collect the claim as long as (i) the Customer meets its payment obligations and (ii) does not default on the payment and (iii) no application for the institution of insolvency proceedings is filed and no payments are suspended. If one of the aforementioned cases occurs, BEDRA may demand that the Customer discloses to it the assigned claims and the corresponding debtors, provide all information required to collect the claims, hand over all related documents and inform the debtors of the assignment.

(5) Any processing of the contractual item by the Customer shall always be done on BEDRA's behalf. BEDRA is considered to be the manufacturer within the meaning of Sec. 950 BGB without any further obligations. If the contractual item is processed together with other items not belonging to BEDRA, BEDRA shall acquire co-ownership of the new product in proportion of the value of the invoice amount to the purchase price of the other items. Apart from that, the same regulations shall apply to the product created by processing as to the contractual item.

(6) In the event that the contractual item is combined, intermixed or mingled with movable property of the Customer in such a way that the Customer's item is to be regarded as the main item, the Customer shall hereby transfer to BEDRA its ownership of the uniform item in proportion of the value of the contractual item to the value of the other combined, intermixed or mingled items. If the contractual item is combined, intermixed or mingled with items of a third party in such a way that the item of the third party is to be regarded as the main item, the Customer shall hereby assign to BEDRA its payment claims against the third party in the amount corresponding to the invoice amount of the contractual item.

(7) The new product created by combination or intermixture, the rights of (co-)ownership of the new product transferred to BEDRA as well as the payment claims assigned according to the foregoing subsection serve to secure BEDRA's claims in the same way as the contractual item itself.

(8) At the Customer's request, BEDRA is obliged to release the securities it is entitled to insofar as the realisable value of the securities exceeds the claims to be secured by more than 10%.

## **Sec. 10 Final provisions**

(1) The place of jurisdiction shall be Leonberg.

(2) The relations between BEDRA and the Customer shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **II. Special provisions for purchase and recycling**

The regulations set forth in Art. II shall apply in addition to the provisions of Art. I if BEDRA purchases products containing precious metals or accepts material containing precious metals for precious metal recovery (recycling) from the Customer.

## **Sec. 11 Composition of material to be recycled**

(1) Within the scope of recycling, BEDRA melts material containing precious metals supplied by the Customer (reworking material) into homogenous bars and ascertains the weight and precious metal content by taking samples.

(2) To this end, BEDRA accepts from the Customer exclusively reworking material of non-hazardous composition, i.e. containing in particular no toxic, corrosive, explosive, highly flammable or radioactive components. In addition, the reworking material must not contain any harmful or interfering components (such as mercury, chlorine, bromine, arsenic, selenium, etc.).

(3) The Customer is obliged to inform BEDRA without delay before conclusion of the contract if the reworking material contains any harmful or interfering components within the meaning of Subsection (2). Such material may only be supplied after obtaining BEDRA's prior expressly written consent. If BEDRA agrees to accept such material in exceptional individual cases, the material must be properly packaged and labelled in accordance with the statutory provisions.

(4) BEDRA reserves the right to charge higher processing costs in individual cases if special properties of the reworking material, of which the Customer failed to inform BEDRA upon conclusion of the contract and of which BEDRA was also otherwise not aware, result in additional expenditure. The regulation set forth in Sec. 12 below shall remain unaffected.

## **Sec. 12 Customer's liability for damage**

The Customer is liable to BEDRA for any damage attributable to the Customer's failure to duly inform BEDRA of hazardous or harmful components of the reworking material.

## **§ 13 Delivery/Passing of risk**



- (1) Unless otherwise agreed with the Customer, the Customer shall bear the costs and risk of supplying the reworking material until handover at BEDRA's place or business or another designated place of handover.
- (2) If BEDRA has agreed to pick up the reworking material in individual cases, the risk shall pass on to BEDRA or the transport company commissioned by BEDRA upon handover.

#### **Sec. 14 Statements of account**

- (1) BEDRA will issue a statement of account on the result of the ascertainment of weight and precious metal content. The statement of account shall become binding upon acceptance by the Customer, unless the Customer objects to it in text form within 3 working days of receipt of the statement of account, insofar as BEDRA has pointed out this legal consequence.
- (2) BEDRA is entitled to further process the reworking material once the statement of account has become binding.
- (3) The weights and precious metal contents ascertained based on the statement of account will be credited to the Customer's weight accounts (precious metal accounts). The provisions set forth in Art. III shall apply.
- (4) The Customer shall bear the agreed fee for recycling. BEDRA is entitled to set off this fee against the Customer's claims.

#### **Sec. 15 Purchase of precious metal**

- (1) Upon conclusion of a purchase contract with the Customer for the purchase of precious metal, the Customer is obliged to supply the purchased precious metals immediately and completely in the agreed quantity.
- (2) If the Customer fails to supply the purchased precious metals or fails to supply them completely despite having been granted an additional period, BEDRA is entitled to claim compensation. This claim shall cover in particular the additional costs arising from obtaining replacement.
- (3) The price agreed with the Customer shall apply.

#### **Sec. 16 Transactions via weight accounts**

All transactions in connection with purchase and recycling are carried out via weight accounts in accordance with the provisions of Art. III.

### **III. Special provisions for weight accounts**

The regulations set forth in Art. III shall apply in addition to the provisions of Art. I and II.

#### **Sec. 17 Weight accounts**

In dealings with precious metals, BEDRA maintains separate weight accounts for each customer and each precious metal (hereinafter: "metals").

#### **Sec. 18 Market price / Bid and ask price**

- (1) To the extent that the market price of a metal is authoritative within the scope of ascertaining an account balance, offsetting or the purchase / sale of metals, the market price shall be based on the respective up-to-the minute "Kitco price" (Kitco Metals Inc., Montreal, Quebec /Canada / available at [www.kitco.com](http://www.kitco.com)) for the respective metal, unless otherwise agreed with the Customer.
- (2) The bid price shall be authoritative for credits / the purchase of metals by BEDRA from the Customer and the ask price for debits / the sale of metals to the Customer.
- (3) In the event a purchase / credit by BEDRA, the agreed markdown will be charged on the market price ("bid price") and in the event of a sale (including obtaining replacement) / debit, the agreed markup ("ask price").

#### **Sec. 19 Property rights to the account balance**

- (1) To the extent that BEDRA itself stores metals in physical form, the balances of the various weight accounts, including those of other customers (account holders), will not be stored by BEDRA physically separated. BEDRA is entitled to change the form and state of the metals.
- (2) Each account holder is a joint owner of the existing total balance in proportion of the weight of a metal held in its account. If the total balance of metals physically stored by BEDRA is lower than the sum of the amounts held in all metal accounts at BEDRA, the Customer's ownership of the balance extends to the share of its claim.
- (3) BEDRA is entitled to reinstate the Customer's sole ownership at any time through segregation.
- (4) Apart from that, BEDRA will store the metals at its place of business free of charge. However, BEDRA is not obliged to keep available the equivalent value of the account balance in physical form at that location.
- (5) When purchasing or selling metals, the transfer of ownership is deemed to have been completed once the amount is credited to the respective account. For the purchase of metals by the Customer, this is subject to the suspensive condition of full payment of the purchase price.



## **Sec. 20 Negative account balance ("overdraft") / settlement**

- (1) Weight accounts may only show a negative balance ("overdraft") under a special agreement between BEDRA and the Customer, which must be made at least in text form.
- (2) If it has been agreed that the weight accounts may show a negative balance, BEDRA is entitled, in the absence of an express agreement to the contrary with the Customer, to declare due any negative account balances after written request and setting a reasonable period of at least 2 weeks.
- (3) If the Customer is obliged to settle the negative account balance in one or more weight accounts, it shall, at its option, either supply a corresponding amount of the respective metal or pay the amount required for settlement by the due date. If the Customer fails to supply material of at least the equivalent value of the negative balance by the due date, BEDRA will immediately obtain corresponding replacement and charge the Customer at the ask price.
- (4) If, in the case mentioned in Subsection 3 above, a Customer has at least one weight account for a specific metal with a negative balance, but at least one other account for a different metal with a positive balance, and the Customer fails to supply metal to settle the account, BEDRA is also entitled, at its option, to purchase metals from the Customer up to the amount of the balance to be settled immediately after the due date while selling metals for the accounts with a negative balance to settle the negative balance. For the purchase of metals (withdrawal from the weight account), BEDRA will credit the Customer's account at the bid price. Subsection 3 above shall apply to obtaining replacement.
- (5) Invoices shall be due for payment within one week.

## **Sec. 21 Balances of account**

- (1) The weight accounts are managed as current accounts. At the Customer's request, BEDRA will communicate the current balance in the weight account.
- (2) Where an account balance is indicated in statements concerning individual transactions, this is only done for the purpose of information. Due to recent deposits or withdrawals, the latest transactions may not yet be shown in these statements.
- (3) As long as BEDRA provides a corresponding online feature (app) at its discretion, the Customer can view its current account balance there on the respective terms. The information provided there is non-binding.

## **Sec. 22 Disposal of the account balance**

- (1) The Customer may demand, at its option, to use its account balance (at the bid price) within the scope of the business relationship or its return in physical form, in whole or in part. Any security rights of BEDRA (rights of lien) shall remain unaffected.
- (2) If the Customer demands return in physical form, BEDRA will provide the metal in the customary quality (usually in the form of granules). If the Customer demands return in a different form (for example in the form of bars), BEDRA is entitled to charge a reasonable additional fee. The place of performance shall be BEDRA's place of business.
- (3) Return at a different location shall be subject to a separate agreement between the Parties. In this case, the cost of transport, including insurance, shall be borne by the Customer.

## **Sec. 23 Fees and expenses**

The management of the weight accounts is free of charge for the Customer.

## **Sec. 24 BEDRA's right of lien**

- (1) BEDRA shall acquire a right of lien to all assets of the Customer of which it has obtained or will obtain possession within the scope of the business relationship with the Customer as well as to all present and future claims of the Customer against BEDRA under the business relationship between the Parties, in particular credits in individual precious metal accounts (hereinafter: "collateral").
- (2) The right of lien serves to secure all present, future or contingent claims of BEDRA against the Customer under the business relationship with the Customer.
- (3) If assets of the Customer come into BEDRA's possession with the express proviso that they may only be used for a specific purpose, the right of lien shall not extend to these assets.
- (4) BEDRA is obliged to release collateral if and to the extent to that the realisable value of all collateral exceeds 110% of the secured claims under this right of lien on a more than temporary basis. BEDRA is free to select the collateral to be released at its discretion, while taking the Customer's legitimate interests into account.
- (5) If the Customer fails to meet its obligations towards BEDRA in due time, BEDRA is entitled to realise the collateral even without an enforceable title after having notified the Customer thereof in writing and setting a reasonable period of at least one week.
- (6) If physically available metals of the Customer have been pledged to BEDRA under this right of lien, the following shall apply to realisation: BEDRA may, at its option, either bring about the transfer of ownership of the collateral to BEDRA by submitting a unilateral declaration in text form or realise the collateral without any restrictions. The Customer hereby irrevocably agrees to such transfer of ownership to BEDRA in accordance with these provisions. For the transfer of ownership, BEDRA will credit the Customer's account at the bid price at the time of transfer of ownership. BEDRA will realise the collateral while taking the Customer's legitimate interests into account.



(7) If credits of the Customer in individual precious metal accounts have been pledged under this right of lien, BEDRA is entitled to purchase metals in the amount of the due claims and credit the Customer's account at the bid price.

**Sec. 25 Term and termination**

(1) The contract for weight accounts is concluded for an indefinite period and may be terminated by either Party with a notice period of three months. Notice of termination must be given in writing.

Either Party is entitled to terminate the contract without notice for cause.

(2) In the event that BEDRA terminates the contract with notice, BEDRA is entitled to purchase any account balance of the Customer after notifying the Customer, unless the Customer objects to it within 3 months of receipt of the notification. In this case, the Customer hereby irrevocably agrees to the transfer of ownership to BEDRA. For the purchase, BEDRA will credit the Customer's account at the bid price at the time of purchase.