

# TERMS OF DELIVERY AND PAYMENT

## A. General provisions

1. Our Terms of Delivery and Payment apply with respect to persons conducting commercial or self-employed business activities at the time of concluding the contract (entrepreneurs), to legal persons under public law or to a special fund under public law.
2. The Purchaser's "General Terms and Conditions of Business", most notably his/her terms of purchase, delivery and payment, shall not apply to the extent that they contradict our "Terms of Delivery and Payment".

## I. Conclusion of contract

1. Our offers are without engagement. Our declarations shall only be valid if made in writing.

## II. Terms of payment

1. Payments are to be effected net and in sufficient time so as to enable us to dispose of the amount on the due date. The Purchaser may only offset undisputed or final and absolute claims. Liens shall only be permitted to the extent that they are founded on the same contractual relationship.
2. In the event of a payment deadline being missed, interest amounting to 8% above the base rate valid at the European Central Bank shall be charged pursuant to § 247 German Civil Code (BGB).
3. In the event that, due to circumstances subsequently emerging which result in a material deterioration of the Purchaser's assets, our payment claim should be at risk, we shall be entitled to demand immediate payment thereof irrespective of the time to maturity of any bills of exchange accepted as payment.
4. Should the Purchaser fall into arrears or should circumstances arise within the meaning of Article 3 of these terms and conditions, we shall be entitled to grant the Purchaser a period of grace following our demand for immediate payment within which the amount is to be settled. In the event that payment should not have been remitted by the deadline, we shall be entitled to prohibit the Purchaser from further processing the goods supplied and to demand return of the goods.
5. In the event of the occurrence of Numbers 3 and 4, we may revoke a direct debit authorisation (A IV 7) and demand advance payment for any outstanding deliveries.
6. The Purchaser may only avert the legal consequences stated in Numbers 3-5 by furnishing collateral to the equivalent amount of our payment claim.
7. DK shall be entitled to assign its accounts receivables for financing purposes.
8. Should the Purchaser fall into arrears with a payment, all payment claims shall become due immediately without the need to serve a notice of default.
9. The Purchaser is deemed to be in arrears if the purchase amount is due and the Purchaser fails to remit the amount in response to a reminder, an action for performance or a payment order.

### **III. Collateral**

1. We are entitled to the standard form and scope of collateral to cover our claims even to the extent that these are contingent or deferred.

### **IV. Retention of title**

1. All goods that we supply shall remain in our ownership (goods subject to retention of title) until all claims, most notably any receivables owing to us in the course of the business relationship, have been settled in full. This shall also apply to any future and contingent claims, arising from reverse bills of exchange, for example.
2. Any processing or conversion of the goods subject to retention of title shall occur on our behalf as the manufacturer within the meaning of § 950 German Civil Code (BGB) but without any obligations for us. Processed and converted goods shall be deemed to be goods subject to the retention of title within the meaning of Number 1.
3. If the Purchaser processes, combines and intermixes the goods subject to retention of title with other goods, we shall acquire part ownership in the ensuing item which shall be a proportionate value of the invoice sum for the goods subject to retention of title to the invoice sum for the other goods used. Should our ownership of the goods elapse as a result of their being combined, mixed or processed, the Purchaser hereby assigns to us the rights of ownership and remainders to the new inventory or item in proportion to the invoice sum for the goods subject to retention of title to the invoice sum for the other goods used, and shall store these for us free of charge. Our rights of part ownership shall apply as goods subject to retention of title within the meaning of Number 1.
4. The Purchaser may only resell goods subject to retention of title within the ordinary course of business under his/her standard terms and conditions of business and to the extent that he/she is not in arrears, provided that he/she reserves the right of ownership and assigns the claims arising from the resale of the goods subject to retention of title in accordance with Numbers 5 and 6. The Purchaser shall not be entitled to dispose of the goods subject to retention of title in any other manner. Resale within the meaning of Section A. IV. shall also apply to the use of goods subject to retention of title for the purposes of fulfilling contracts for work and services as well as contracts for work and materials.
5. The Purchaser's claims arising from the resale of the goods subject to retention of title are hereby assigned to us. They shall serve as collateral to the same amount as the goods subject to retention of title within the meaning of Number 1.
6. Should the Purchaser resell goods subject to retention of title together with other goods, the claim to be assigned to us from the resale shall be proportionate to the invoice sum for the goods subject to retention of title to the invoice value of the other goods. When reselling goods to which we have acquired partial ownership pursuant to Number 3, a corresponding proportion of the claim which is equivalent to our partial ownership in such goods shall be assigned to us.
7. The Purchaser shall be entitled to collect claims arising from the resale of the goods unless we revoke direct debit authorisation due to the occurrence of any of the cases outlined under Provision II Numbers 3 and 4. At our request, the Purchaser shall notify the customer immediately that the claim has been assigned to us – provided that we do not undertake this step ourselves – and shall furnish us with the details and documents required for the purpose of collection.

8. The Purchaser is obliged to notify us without delay of any liens or other impairments through third parties.
9. Should the value of the existing collateral exceed the secured claims by a total of more than 10%, we shall release collateral at our discretion on the Purchaser's request.

## **V. Place of fulfilment and court of jurisdiction**

1. The place of fulfilment and court of jurisdiction for both parties to the contract shall be Duisburg (Germany). We shall also be entitled to take legal action against the Purchaser at his/her general legal venue.

## **B. Execution of deliveries**

### **I. Delivery periods and deadlines**

1. Delivery periods shall begin on the day of our order confirmation but not before all details of the order have been clarified in full; the same shall apply to delivery deadlines.
2. Should the Purchaser fail to meet his/her contractual obligations – including the duty to cooperate or any ancillary duties – such as the opening of a letter of credit, submission of domestic or foreign certificates and permits, advance payments or similar obligations, we shall be entitled to duly extend our delivery periods and deadlines in keeping with our production flow and without prejudice to any rights owing to us from the Purchaser's default.
3. In determining adherence to delivery periods and deadlines, the time of dispatch ex works shall be decisive. Should it not be possible to dispatch the goods on time through no fault of our own, the delivery periods and deadlines shall be deemed to have been met at the time notification that the goods are ready for dispatch has been given.
4. Should we delay delivery, the Purchaser – provided he/she can credibly prove that he/she has incurred damages as a result of the delay – may demand compensation amounting to 0.5% of the price of the part of the delivery which could not be used appropriately as a result of the delay for each full week of the delay, whereby maximum compensation shall be limited to 5% of the price.
5. The Purchaser's claims for compensation resulting from delays in delivery or claims for compensation in lieu of performance which exceed the limits stated in B I.4 shall be excluded for all cases involving a delay in delivery even after a deadline has been set by us. This shall not apply to compulsory liability in cases of wilful intent, gross negligence or due to injury to life, limb or health. The Purchaser may only withdraw from the contract within the bounds of the statutory provisions to the extent that the delay in delivery is within our control. The aforementioned provisions do not imply that the burden of proof shall be amended to the detriment of the Purchaser.
6. On our request, the Purchaser shall be obliged to declare, within a reasonable period of time, whether he/she will withdraw from the contract or insist on delivery following a delay in delivery.

### **II. Dimensions, weights, quality**

1. Deviations in dimensions and weights may arise due to our method of loading (picker arms and magnetic cranes). These are permissible within the established practices. This applies especially to deviations in weight of up to 5%. The weights are ascertained using

scales calibrated by DK or, in the case of ship-loading, using ship load calibrations, and are decisive for all invoicing unless the parties have reached a different express agreement. Weighing logs shall be furnished as verification of the weight in question. Unless it is customary practice to weigh items individually, the total weight of the consignment shall apply in each case. Deviations from the mathematical individual weights shall be spread across the same proportionately. Deviations as to quality shall also be permissible within the bounds of established practice.

### **III. Dispatch, packaging and transfer of risk**

1. In cases of free delivery, we shall determine the freight forwarder or carrier.
2. Should the loading or transportation of the goods be delayed due to circumstances beyond our control, we shall, at our own discretion, be entitled to store the goods at the expense and risk of the buyer, to take all necessary steps deemed to be appropriate to preserve the goods and to invoice the goods as if they had been delivered. The same shall apply if the Purchaser has been notified that the goods are ready for dispatch and has not called off the goods within four (4) days of such notification. The statutory regulations governing delays in acceptance shall remain unaffected.
3. In the event of damage occurring in transit, the Purchaser shall arrange for a partial inventory to be conducted by the respective authorities without delay.
4. All risks relating to the goods shall be passed to the Purchaser at the time they are handed over to the forwarding agent or carrier of the Purchaser but no later than when the goods leave the factory or the warehouse. The same shall apply if carriage paid delivery has been agreed. At the request and expense of the Purchaser, we will take out standard transportation insurance.
5. Risk shall also pass to the Purchaser if the dispatch or delivery of the goods is delayed due to circumstances within the control of the Purchaser or if the Purchaser delays acceptance on other grounds.

### **IV. Defects as to quality**

In the case of defects as to quality, we shall be liable as follows:

1. All deliveries and services containing defects as to quality within the statute of limitations shall, at our discretion, be remedied free of charge or new deliveries shall be made, provided that the cause of such defects was apparent at the time of the passing of risk.
2. Claims arising from defects as to quality shall elapse in 12 months provided that no longer validity periods should be prescribed by law pursuant to §§ 438 Para. 1 No. 2, 479 Para. 1 and 634 a Para. 1 No. 2 of the German Civil Code (BGB) or in the following cases: injury to life, limb or health, wilful or gross dereliction of duty on our part or fraudulent concealment of a defect. The statutory regulations governing the tolling of a statute of limitations, interruption of the statute of limitations and recommencement of the deadlines shall remain unaffected.
3. In the case of pig-iron, the Purchaser is obliged to serve us with a written complaint within 5 working days of detecting any apparent defects such as shortages in weight or deviations in quality pursuant to EN 10 001. Failing this, no claims relating to defects as to quality may be made. The deadline shall be deemed to have been met if the complaint is sent in time. The Purchaser shall have full burden of proof with respect to all grounds

for asserting the claim, most notably with respect to the defect itself, for the time the defect is detected and for ensuring that the complaint is filed in good time.

4. In the case of a justified, immediate complaint, we shall, at our discretion, collect the defective goods and furnish replacements or remedy the defect(s) in question. Only if we fail to meet our obligations or if at least two attempts at remedying the defect(s) should fail may the Purchaser withdraw from the contract or reduce the purchase price without prejudice to any claims for compensation pursuant to Section C of these terms and conditions.
5. Claims based on defects shall not be deemed to exist in the event of minor deviations from the agreed quality and nature of the goods, minimal impairment of serviceability or damage which occurs after the passing of risk as a consequence of improper or negligent handling or due to other circumstances which are not foreseen pursuant to the contract.
6. The Purchaser's claims for reimbursement of expenses arising from the need to remedy any defects, most notably any costs of transportation, labour and materials and tolls, are excluded in cases in which expenses increase due to the delivery item subsequently being transported to a location other than the Purchaser's branch, unless the transfer is deemed to be within the bounds of the intended use of the item.

## **C. Other claims for compensation**

1. The Purchaser's claims for compensation and indemnity (hereinafter referred to as claims for compensation) shall be excluded irrespective of the legal grounds on which they are based - most notably the breach of any obligations arising from a contractual obligation and tortious acts.
2. This shall not apply to the extent that a case pursuant to Section B. I. Nos. 4 and 5 exists or compulsory liability exists pursuant to the product liability laws, in the case of wilful intent, gross negligence or injury to life, limb and health, or in the case of any infringements of any cardinal obligations of the contract. A claim for compensation on the grounds of a breach of cardinal obligations shall be limited to the foreseeable damages typical of a contract of this nature provided that no liability exists on the grounds of wilful intent, gross negligence or injury to life, limb and health. The aforementioned provisions do not imply that the burden of proof shall be amended to the detriment of the Purchaser.
3. To the extent that the Purchaser is entitled to claims for compensation pursuant to this Section C, these shall become time-barred at the time the statute of limitations valid for claims arising from defects as to quality expires pursuant to B. IV. 2. In the case of claims for compensation based on product liability laws, the statutory provisions governing statutes of limitation shall apply.

## **D. Miscellaneous**

### **I. Proof of exportation**

Should a foreign purchaser or his/her representative transport or dispatch the goods to a third country territory (with the exception of the territories listed under § 1, Para. 3 German Sales Tax law [USTG]), said purchaser is to furnish us with the export certificate required for taxation purposes. Should no export certificate be submitted, the Purchaser shall pay the relevant sales tax rate on the invoice amount that applies to deliveries within the Federal Republic of Germany.

**II. Applicable law**

The laws of the Federal Republic of Germany shall apply to both parties.

July 2002, DK RECYCLING UND ROHEISEN GMBH