

## § 1 General considerations and scope of application

- 1.1 The following terms and conditions apply to all offers, deliveries and services. These are an integral part of all contracts which Sutco RecyclingTechnik GmbH (hereinafter also referred to as the "supplier") concludes with its contractual partners (hereinafter also referred to as the "customers") concerning the deliveries or services offered by the supplier. They shall also apply to all future deliveries, services or offers to the customer, even if they are not separately agreed again.
- 1.2 Terms and conditions of the customer or third parties shall not apply, even if we do not separately object to their validity in individual cases. Even if the supplier refers to a letter containing or referring to the customer's or a third party's terms and conditions, this does not constitute an agreement to the validity of those terms and conditions.
- 1.3 These Terms and Conditions of Sales and Delivery apply to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Article 310 para. 1 of the German Civil Code (BGB).

## § 2 Offer and conclusion of contract

- 2.1 The offers of the supplier are subject to change and non-binding, unless they are expressly marked as binding or a specific acceptance period is included. Conclusions, other agreements and declarations shall not become binding until confirmed in writing by the Supplier, unless a contract document is signed by both parties in accordance with No. 2.7.
- 2.2 The documents belonging to the offer, such as illustrations, drawings, weights and dimensions, are only approximately authoritative, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.
- 2.3 Unless otherwise agreed, the goods are designed and manufactured in accordance with the applicable German or European standards and directives. If technical designs deviating from this (e.g. ASME standards) are required, an express agreement is required.
- The structural designs and calculations correspond to average Western European climatic conditions. Factors for the design and calculation of the steel components for temperatures below -10°C are not taken into account. Any deviating conditions must be notified by the customer prior to conclusion of the contract.
- Steel parts are cleaned and painted in RAL colour of the customer's choice. Galvanised sheets are not painted.
- 2.4 Cost estimates are non-binding and subject to a charge, unless expressly agreed otherwise.
- 2.5 The supplier retains ownership or copyright of all offers and cost estimates made by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the customer. The customer may not make these items accessible to third parties as such or in terms of content, disclose them, use them himself or through third parties or reproduce them without the express consent of the supplier. At the request of the supplier, he shall return these items to the supplier in full and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.
- 2.6 Where a supply contract is concerned to which several documents belong, the following priority shall apply in the event of contradiction of the individual documents:

- a) Order confirmations of the supplier with all supplements
- b) Drawings:  
1. Detailed drawings  
2. Overview drawings  
3. Standard sheets
- c) Specifications
- d) These General Terms and Conditions
- 2.7 Additions and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing in order to be effective. With the exception of managing directors or authorised signatories, employees of the supplier are not entitled to make verbal agreements deviating from this. Transmission by telecommunication, in particular by e-mail, shall be sufficient to comply with the written form, provided that a copy of the signed declaration is transmitted.

## § 3 Prices and payments

- 3.1 The prices stated are net, plus the value added tax applicable at the time the service is provided. Unless otherwise agreed, prices are quoted in EURO ex works including loading, but excluding packaging, unloading and assembly. For export deliveries, customs duties as well as fees and other public charges are added. If, in the case of foreign transactions, the goods remain in Germany or if no proof of export is provided, the supplier shall be entitled to charge VAT at the statutory rate and other expenses. All other taxes, fees and other charges arising outside the Federal Republic of Germany shall be borne by the customer.
- 3.2 If, between the conclusion of the contract and the delivery date, there is a significant change in relevant cost factors, such as, in particular, the costs of wages, input material or freight, the parties shall agree on an adjustment of the agreed price to a reasonable extent in accordance with the influence of the relevant cost factors.
- 3.3 Unless expressly agreed otherwise, payments are payable gross within 30 days of the invoice date. The date of receipt of payment by the supplier is decisive for the date of payment. If the customer fails to make payment when due, the outstanding amounts shall bear interest at 9% p.a. from the due date. The assertion of a higher damage caused by delay remains unaffected. Any discounts or rebates granted shall be forfeited in the event of late payment.
- 3.4 Any settlements by bills of exchange, which are accepted by the supplier only by express agreement and on account of payment, do not grant any entitlement to a discount.
- 3.5 The supplier shall be entitled to perform or render outstanding deliveries or services only against advance payment or the provision of security if, after the conclusion of the contract, it becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the customer and as a result of which the payment of the supplier's outstanding claims by the customer under the respective contractual relationship (including under other individual orders to which the same framework contract applies) is jeopardised.
- 3.6 Offsetting with counterclaims of the customer or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established. In the event of defects in the goods, the customer's counter rights under No. 7 shall remain unaffected.
- 3.7 Insofar as the supplier has indicated that the goods are ready for dispatch and this is not before the contractually agreed date, the supplier is entitled to charge for its services. In the event of readiness for dispatch before the contractually agreed date, the payment period shall begin to run from the time of the contractually agreed date.

## § 4 Delivery times, delivery delays

- 4.1 The agreed delivery time shall commence with the dispatch of the order confirmation and shall only apply on condition that all details of the contract are clarified in good time and that all obligations

of the customer are fulfilled in good time. A further prerequisite for the start of the delivery period is that an agreed down payment is received by the supplier on time. The delivery time shall be deemed to have been met if the goods have left the factory or notification of readiness for dispatch has been given by the time the delivery time expires.

- 4.2 The delivery period shall be extended to a reasonable extent in the event of unforeseen events affecting the supplier or its suppliers, which the supplier could not avert even with reasonable care in the circumstances of the individual case and which have a significant influence on its obligations. This includes, but is not limited to, war, official intervention, operational disruptions, industrial disputes and delays in the delivery of operating materials or input materials. If delivery becomes impossible or unreasonable for the supplier due to the impediment, the supplier shall have an extraordinary right to withdraw from the contract. The supplier undertakes to inform the customer immediately of the occurrence of an unforeseeable event.
- 4.3 In the event of an extension of the delivery period in accordance with No. 4.2, the customer may withdraw from the contract by immediately notifying the supplier in writing if he cannot reasonably be expected to accept the goods due to the delay.
- 4.4 The supplier is entitled to make partial deliveries if
  - a) the partial delivery is usable for the customer within the scope of the contractual intended purpose,
  - b) the delivery of the remaining ordered goods is ensured and
  - c) the customer does not incur any significant additional expenses or costs as a result (unless the supplier agrees to bear these costs).
- 4.5 If the supplier is in default with a delivery or service or if a delivery or service becomes impossible for him, for whatever reason, his liability for damages is limited in accordance with Clause 9 of these General Terms and Conditions of Sales and Delivery.
- 4.6 If delivery is delayed for a reason for which the customer is responsible, the supplier is entitled to store the goods at the customer's expense at its reasonable discretion and to take all measures for the preservation of the goods at its reasonable discretion.

## § 5 Transfer of risk, dispatch, acceptance

- 5.1 The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or the supplier has assumed other services (e.g. shipping or installation).
- 5.2 Unless otherwise agreed, transport and other packaging shall not be taken back by the supplier. The customer is responsible for the disposal of the packaging.
- 5.3 If dispatch is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer from the day on which the goods are ready for dispatch, provided the supplier has notified the customer that the goods are ready for dispatch.
- 5.4 If the customer is in default of acceptance within the meaning of section 5.3, if he fails to cooperate or if the delivery of the supplier is delayed for other reasons for which the customer is responsible, the supplier is entitled to demand compensation for the resulting damage and additional expenses (such as storage costs). Costs for storage after transfer of risk shall be borne by the customer. In the event of storage by the supplier, the storage costs shall amount to 0.25% of the invoice amount of the delivery items to be stored per expired calendar week. We reserve the right to claim and prove further or lower storage costs.
- 5.5 The consignment will only be insured by the supplier against theft, breakage, transport, fire and water damage or other insurable

risks at the express request and expense of the customer.

- 5.6 The goods shall be accepted by the customer, even if they have insignificant defects, without prejudice to the rights under No. 7.
- 5.7 If acceptance has been agreed between the parties, a report shall be drawn up on the last day of acceptance and signed by the parties. In the event of insignificant defects, the customer is not entitled to refuse acceptance of the goods. Insignificant defects are those whose effects do not or insignificantly restrict the function. If the contract stipulates acceptance of the goods before dispatch, the buyer shall inform the customer of the acceptance date. If the customer culpably misses the acceptance date, the goods shall be deemed to have been accepted..

## § 6 Retention of title

- 6.1 The retention of title agreed below serves to secure all respectively existing current and future claims of the supplier against the customer arising from the supply relationship existing between the parties concerning plant engineering products (including balance claims from a current account relationship limited to this supply relationship).
- 6.2 The supplier retains ownership of the goods delivered to the customer until the purchase price has been paid in full and until all purchase price claims existing at the time of delivery have been settled, including those arising from the individual orders covered by the contract.

The goods as well as the goods covered by the retention of title taking their place in accordance with the following provisions are hereinafter referred to as "goods subject to retention of title".

- 6.3 The customer is entitled to process and sell the goods subject to retention of title in the ordinary course of business until the event of realisation (No. 6.9). Pledges and transfers of ownership by way of security are not permitted.
- 6.4 If the reserved goods are processed by the customer, it is agreed that the processing is carried out in the name and for the account of the supplier as manufacturer and that the supplier acquires direct ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur, the customer already now transfers its future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to the supplier as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, the supplier shall, insofar as the main item belongs to it, transfer to the customer pro rata co-ownership of the uniform item in the ratio specified in No. 6.4, sentence 1.
- 6.5 In the event of resale of the reserved goods, the customer hereby assigns to the supplier by way of security the resulting claim against the purchaser - in the event of co-ownership of the supplier in the reserved goods, in proportion to the co-ownership share. The same applies to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. The supplier revocably authorises the customer to collect the claims assigned to him in his own name. The supplier may only revoke this direct debit authorisation in the event of realisation.
- 6.6 If third parties access the goods subject to retention of title, in particular by way of seizure, the customer shall immediately notify them of the supplier's ownership rights and inform the supplier thereof in order to enable the supplier to enforce its ownership rights. If the third party is not in a position to reimburse the supplier for the court or out-of-court costs incurred in this connection, the customer shall be liable for these to the supplier.

- 6.7 If the value of the existing securities (goods subject to retention of title and the items or claims replacing them) exceeds the claims of the supplier by more than 20% in total, the supplier is obliged to release securities of the supplier's choice to this extent at the request of the customer.
- 6.8 Insofar as outside the Federal Republic of Germany the validity of the retention of title is subject to special conditions, the customer shall ensure that the supplier is granted a corresponding and at least equivalent security.
- 6.9. If the supplier withdraws from the contract in the event of behaviour contrary to the contract on the part of the customer - in particular default of payment (enforcement), the supplier is entitled to demand the return of the reserved goods.

## § 7 Defects of the goods, warranty

- 7.1 Contrary to Article 438 BGB (German Civil Code), the customer's warranty rights shall become statute-barred within 12 months from the transfer of risk, unless a longer limitation period is stipulated by law. Insofar as acceptance is required, the limitation period shall commence upon acceptance. Alternatively, the customer's warranty rights shall become statute-barred after the expiry of 2,000 operating hours, provided that this circumstance occurs before the expiry of 12 months from the transfer of risk or acceptance.

Excluded from the shortening of the limitation period according to No. 7.1 sentence 1 and 2 are claims for damages due to injury to life, body or health as well as claims for damages due to gross negligence or intentional damage attributable to the supplier.

After carrying out an agreed acceptance, the goods shall be deemed to have been approved, unless there is a defect which was not recognisable at the time of acceptance. The above-mentioned limitation of warranty rights shall also apply to recourse claims within the meaning of Article 445a BGB. The suspension of the statute of limitations according to Article 445b para. 2 BGB remains unaffected, but ends at the latest five years after delivery of the goods.

Claims for defects do not exist in the case of faults which have arisen after the transfer of risk as a result of natural wear and tear, the violation of operating, maintenance and installation instructions, unsuitable or improper use, incorrect or negligent handling, storage or installation or as a result of interventions in the delivered goods carried out by the customer or third parties.

- 7.2 The prerequisite for any warranty rights of the customer is its proper fulfilment of all inspection and complaint obligations owed pursuant to Article 377 HGB (German Commercial Code). The supplier must be notified of any defects immediately after they become apparent, but at the latest within seven working days of handover. In all other respects, the statutory provisions shall apply.

At the request of the supplier, a rejected delivery item shall be returned to him carriage paid. In the event of a justified complaint, the supplier shall reimburse the costs of the most favourable shipping route. This shall not apply if the costs increase for the reason that the delivery item is located at a place other than the place of intended use.

- 7.3 In the event of material defects in the delivered items, the supplier shall first be obliged and entitled to rectify the defect or to make a replacement delivery within a reasonable period of time. In this respect, the supplier has the right to choose the type of subsequent performance. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the customer may withdraw from the contract or reasonably reduce the purchase price. Only in urgent cases of danger to operational safety and to prevent disproportionately serious damage - in which case the supplier must be notified immediately - or if the supplier is in default with the rectification of the defect, the customer has the right to rectify the defect himself

or have it rectified by third parties and to demand reimbursement of the necessary costs from the supplier. The supplier is entitled to make the subsequent performance owed dependent on the customer paying the purchase price due. However, the customer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

- 7.4 The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as, if applicable, removal and installation costs shall be borne or reimbursed by the supplier in accordance with the statutory regulations and these General Terms and Conditions of Sales and Delivery if a defect is actually present. Otherwise, the supplier may demand reimbursement from the customer of the costs arising from the unjustified request to remedy the defect if the buyer or could have recognised that there was in fact no defect.
- 7.5 The warranty shall lapse - subject to No. 7.3 sentence 3 - if the customer modifies the delivery item or has it modified by a third party without the consent of the supplier and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the customer shall bear the additional costs of remedying the defect resulting from the change.

## § 8 Property rights

- 8.1 The delivery item is free of industrial property rights or copyrights of third parties in accordance with this No. 8. Each contracting party shall notify the other contracting party in writing without undue delay if claims are asserted against it for the infringement of such rights.
- 8.2 In the event that the delivery item infringes an industrial property right or copyright of a third party, the supplier shall, at its discretion and at its expense, modify or replace the delivery item in such a way that no third party rights are infringed any more, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the customer by concluding a licence agreement. If the supplier does not succeed in doing so within a reasonable period of time, the customer is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the customer are subject to the limitations of No. 9 of these General Terms and Conditions of Sales and Delivery.
- 8.3 In the event of infringements of rights by products of other manufacturers supplied by the supplier, the supplier shall, optionally, either assert its claims against the manufacturers and upstream suppliers for the account of the customer or assign them to the customer. In such cases, claims against the supplier shall only exist in accordance with No. 7 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

## § 9 Liability

- 9.1 The supplier's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with this No. 9, insofar as fault is relevant in each case.
- 9.2 The supplier shall not be liable in the event of simple negligence on the part of its bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations.

Material contractual obligations are the obligation to deliver and install the delivery item on time, its freedom from defects that impair its functionality or usability more than insignificantly, as well as advisory, protective and custodial obligations that are intended to enable the customer to use the delivery item in accordance with the contract or are intended to protect the life or limb of the customer's personnel or to protect the customer's property from significant damage.

9.3 Claims of the customer for damages are excluded. Excluded from this are claims for damages arising from injury to life, limb or health and from the breach of essential contractual obligations (cardinal obligations) as well as liability for other damages based on an intentional or grossly negligent breach of duty by the supplier, its legal representatives or vicarious agents. Material contractual obligations are those whose fulfilment is necessary to achieve the objective of the contract and on whose fulfilment the customer may rely.

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In the event of a breach of material contractual obligations, the supplier shall only be liable for the foreseeable damage typical for the contract if such damage was caused by simple negligence, unless the customer's claims for damages are based on injury to life, limb or health.

The restrictions of No 9.3 sentence 1 to sentence 4 shall also apply in favour of the legal representatives and vicarious agents of the supplier if claims should be asserted directly against them

However, the restrictions of No. 9.3 sentence 1 to sentence 4 do not apply if the supplier has fraudulently concealed the defect or has assumed a guarantee for the quality of the item. The same applies if the supplier and the customer have reached an agreement on the quality of the item. The provisions of the Product Liability Act shall remain unaffected.

9.4 Insofar as the supplier is liable for damages on the merits in accordance with No. 9.2, this liability is limited to damages that were foreseen as a possible consequence of a breach of contract at the time the contract was concluded or that should have been foreseen if due care had been exercised. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation insofar as such damage is typically to be expected when the delivery item is used as intended.

9.5 Liability for damage to property shall be limited to the amount of damage typical for the contract and foreseeable at the time of conclusion of the contract.

9.6 In the event of liability for simple negligence, the supplier's liability to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to the amount of damage typical for the contract and foreseeable at the time the contract was concluded.

9.7. Insofar as the supplier provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed, this shall be done free of charge and to the exclusion of any liability.

**§ 10 Place of performance, place of jurisdiction, applicable law**

10.1 The place of performance for all obligations arising from this contract is Bergisch Gladbach, Germany.

10.2 The place of jurisdiction for all disputes arising from the relationship between us and the customer - also for actions on bills of exchange and cheques - is Bergisch Gladbach, if the customer is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in Germany. The supplier is also entitled to sue at the headquarters of the customer. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision

10.3 The contractual relations 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 of 11 April 1980 (CISG) shall not apply.

10.4 Insofar as the contract or these General Terms and Conditions of Delivery contain loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the loophole.