



## General Delivery and Payment Conditions Speira Recycling Services Germany GmbH

### 1. Content and conclusion of contracts:

We only enter into delivery contracts under the conditions listed herein below. These conditions also apply within ongoing business relations without future express references to these conditions. Differing conditions of the customer do not apply. At the latest by receiving the delivery or the respective partial delivery, the customer declares his consent with the order confirmation ("Auftragsbestätigung") and the exclusive applicability of these General Delivery and Payment Conditions ("GDPC"). Any offers from our side are non-binding. Any and all deviations from this contract require our written confirmation. Should a provision of these GDPC be invalid or become invalid, the remaining provisions remain in force. The parties will replace the invalid provision by a provision coming closest to be economic effect of the invalid provision. These GDPC are only applicable vis-à-vis undertakings in the meaning of § 14 para. 1 BGB (German Commercial Code). The customer can assign any claims out of the contract only with our prior written consent.

### 2. Prices:

Our prices are quoted excluding packaging and sales tax. Should the price-relevant factors change after the conclusion of the contract, in particular the endowment of aluminium scrap we are entitled to amend the prices for such deliveries, that are due later than four months after the conclusion of the contract.

### 3. Passing of risk:

The risk passes to the customer when the goods leave the delivery plant of Speira Recycling Services or have been placed to the customer's disposition. In case we take back any goods, the customer bears the risk until receipt in the delivery plant of Speira Recycling Services.

### 4. Warranties, liability:

Complaints with regard to weight, number of pieces as well as any other obvious defects ("offensichtliche Mängel") have to be notified in writing immediately, at the latest two weeks after receipt of the goods, hidden defects have to be notified immediately after they have been discovered. In case the customer notifies defects too late and refuses to immediately provide samples of the contested goods, any and all warranty claims are cancelled. In case a notice of defect is processed by us, this shall not constitute a waiver with regard to the compliance with this provision. Any and all warranty claims (also with regard to hidden defects, shall expire at the latest one year after delivery. In case of rightful complaints the customer – at our choice – can demand supply of a new product free of defects without additional costs or crediting of the purchase price in exchange for return of the contested goods. In case we refuse substitution delivery or repair or in case these are not carried out within an appropriate time or in case the substitution delivery or repaired goods are again defective, the customer can demand a reduction of the purchase price or rescission of the contract. Any other claims not related to the delivered goods themselves shall be excluded, except claims based on willful conduct or gross negligence. In case of defective partial delivery the customer cannot claim substitution of the entire delivery or the other partial deliveries. We are entitled

to refuse to perform our duties with regard to defects as long as the customer does not fulfill his own obligations to an appropriate extent. For any technical advice with regard to the application and processing possibilities of our products as well as with regard to any other statements connected therewith made by us or our agents, we shall only be liable in case of an express written warranty, provided, the customer has provided to us such information necessary in order to carry out an orderly advice. The assessment, whether the ordered and proposed goods are fit for the use intended by the customer shall be the obligation of the customer; we do not undertake any warranty with regard to the suitability of the goods. Guaranteed qualities have to be designated as such expressly and in writing. For the absence of guaranteed qualities we shall only be liable according to para. 2 and 3. We shall only be liable for damages if and so far as the respective guarantee intended to protect the customer against the occurred damage.

#### **5. Delivery periods:**

The delivery periods are relevant for the time of the delivery ex works. They shall only be valid if they are confirmed in writing and in any case shall only apply roughly. They shall be prolonged appropriately in case the customer does not keep his obligations. Also in the case of agreed delivery times we shall only be in delay after receipt of a reminder. In case of the express promise of a binding delivery period or delivery time the customer can cancel the delayed part of the order upon expiration of an appropriate period of grace in case the partial fulfillment of the contract is of no interest to him. Claims for damages for non-performance or delayed performance are excluded, unless the delay is caused by willful conduct or gross negligence. In case we are hindered in the fulfillment of our obligations by unforeseeable circumstances, which could not be avoided in spite of reasonable diligence, the delivery period shall be prolonged for the period of the hindrance. This shall also apply in the case of labor conflicts, disturbances in our own business, disturbances in the business of our suppliers including carriers, disturbances by measures of public authorities and disturbances of the traffic connections. In case as a result of such circumstances the delivery or performance becomes impossible, we shall be liberated from our obligations without having to pay damages. In case the customer can prove that the delivery as result of the delay is without interest for him, he can terminate the contract under exclusion of any further claims. As far as possible the calling for and specification of particular partial deliveries have to be made for uniform periods of time and quantities and timely enough (usually fourteen days before delivery date) in order to enable production and delivery within the contract period. In case no time period for the division into partial deliveries is agreed, three months shall be deemed to be agreed. In case the goods are not or not timely enough called for or specified, we are entitled to set an appropriate period of grace and to cancel the contract upon the expiration of such period of grace or to ask for compensation of the damage for non-performance. In case a period of time has been set for the acceptance of the goods, we are not obligated to carry out deliveries beyond such period.

#### **6. Basis for credit:**

Any deliveries due shall only be carried out by us against pre-payment in case after conclusion of the contract facts become known to us, which give reason for the assumption that the financial condition of the customer has worsened to an extent endangering the payment, for example if the customer does not pay due invoices, does not cash bills of exchange or checks or if the guaranteed

credit line is cancelled or lowered. In such case any and all of our claims become due and payable immediately. In case demanded prepayments are not effected, we shall be freed from our delivery obligation and – after fruitless expiration of an appropriate period of grace – can cancel the contract or claim damages for non-performance. The customer shall make available to us and describe to us in detail any and all claims against third parties if and so far as these claims are connected with goods provided by us.

#### **7. Retention of title:**

We retain the title in the goods delivered by us as well as in any goods derived from their handling or processing (goods, to which the title is retained) until fulfillment of all our actual or future claims against the customer deriving from our business relation with the customer. The customer is obligated to keep our goods apart from other goods and to mark the goods to which the title has been retained. Already now the customer grants to us the right to visit any business premises, in which goods, to which the title has been retained, are kept and if necessary to demand return or other appropriate measures of security. In these cases the customer will be credited the amount resulting from the realization of the goods minus the realization costs. The customer always undertakes a potential handling or processing of the goods, to which the title has been retained, for us and on our behalf, without any obligations for us arising therefrom. In case the goods are processed or inseparably mixed with other objects, we acquire the title in the new object in the proportion of the value of the processed goods, the title to which has retained, compared to the other goods at the time of the handling or processing. Any potential partial title in the goods obtained by the customer in the course of the joining, combining or mixing of the goods, to which the title has been retained with other goods are already now transferred to us by the customer. All of our goods will be kept by the customers for us with the diligence of a prudent businessman ("mit kaufmännischer Sorgfalt"). The customer is allowed to sell the delivered goods and the goods deriving from their handling or processing, their joining, mixing and combining only in the ordinary course of business and in exchange for cash or, in the case of crediting the payments, under retention of title. Any transfer by way of security, lien or any other disposals of the goods endangering our rights are prohibited. Already now the customer transfers to us any claims resulting from the resale or any other legal reason with regard to the goods, the title to which has been retained, for our security in the amount equaling the value of the goods sold or in the amount of the sales proceeds, if the sales proceeds do not equal the value of the goods. In case the goods, to which the title has been retained, are sold together with other goods, the customer already now transfers to us any claims for the purchase price for the goods, to which the title has been retained, in the full amount or, in case of prior handling or processing with goods not owned by us, in the amount of the value of the processed goods, to which we have retained the title. In case such sale is effected for a lump price, the customer transfers to us the claim for the purchase price in the amount equaling the value of the goods, to which we have retained the title. As long as the customer fulfills his obligation, the assignment of the claims is not made public and the customer is entitled to collect the payments. The invocation of the retention of title and the claim for return of the goods under these GPC shall not be considered as cancellation of the contract. In case the value of the securities surpasses our claims by more than 20 %, the customer shall be entitled to demand release of the securities. The customer immediately has to notify any attachment by third parties with regard to the

goods, to which we have retained the title and with regard to the assigned claims and has to provide any and all documentation necessary for an intervention. The costs for such intervention shall be borne by the customer.

**8. Set-off, right of retention:**

The customer is only entitled to set-off against our claims for payment or to retain payments, if his counter-claims have been expressly acknowledged by us in writing or have been recognized by declaratory judgement.

**9. Non-fulfillment of conditions of payment:**

In case the customer does not keep the terms and conditions of payment, he shall forward to us immediately any payments made upon claims assigned to us. The customer is not allowed to sell and/or transfer the goods, to which we have fully or partially retained title according to para. 9., without our consent and has to return them to us upon demand. The exercise of our right to demand return is not deemed to be a cancellation of the contract. After fruitless expiry of an appropriate period of grace we are entitled to cancel the contract or claim damages for non-performance.

**10. Place of performance, jurisdiction:**

Place of performance for the deliveries is the plant we have designated to carry out the order. Place of performance for the payment shall be Grevenbroich. Place of jurisdiction for any procedures before the Local Court shall be the Local Court of Grevenbroich and for any procedures before the District Court shall be the District Court of Mönchengladbach.

**11. Applicable law:**

The laws of the Federal Republic of Germany shall be applicable. The applicability of the laws on the international sale of goods and on the conclusion of international sales contracts with regard to goods shall be excluded.

**12. Data protection:**

We will process personal data obtained from the customer.

Issued: January 2003