

**General Terms and Conditions of Acceptance of Raw Materials for Purchasing,  
Processing and/or Disposal**

**Section I: General**

**§ 1  
General – scope**

(1) Only these Terms and Conditions shall apply to all transactions – irrespective of the extent to which the pertaining contract may be governed by civil law - in which we take delivery of Raw Materials, in particular, for purchasing, processing or disposing of the same. They shall also apply to any future transactions carried out with the Supplier, without any express agreement to this effect being required.

(2) We reject any terms and conditions of the Supplier contradicting, deviating from, or complementing our Terms and Conditions, unless our consent to such terms and conditions has been expressly given in writing. Failure to lodge an objection, taking delivery of the Raw Material supplied, or performing under a contract – whether with or without the knowledge of the other party's terms and conditions - shall in no case be deemed as constituting acceptance of the other party's terms and conditions, rather our Terms and Conditions shall apply also in these cases.

(3) The present Terms and Conditions shall apply without any limitations in transactions with businessmen in the sense of §§ 14, 310 of the German Civil Code (BGB). If we take delivery of Raw Materials from users in the sense of § 13 BGB, the applicable legal regulations shall apply in lieu of any provisions which may be invalid in such a case.

**§ 2  
Definitions**

(1) „Supplier“ as used in these Terms and Conditions shall mean any party handing over Raw Material to us, be it for the purpose of purchasing, Disposal or Processing.

(2) „Processing“ as used in these Terms and Conditions shall mean both recycling of the Raw Material supplied and treatment, e.g., cleaning or drying, of the Raw Material, and the subsequent return of the material as a Commodity to the Supplier.

(3) „Raw Material“ as used in these Terms and Conditions shall mean all items received by us as feedstock.

(4) „Commodity“ as used in these Terms and Conditions shall mean all chemicals, concentrates, ingot alloys, scrap or secondary raw materials, for the production of which by way of Processing we have the technical and legal capability, and which are distributed by us.

(5) „Disposal“ as used in these Terms and Conditions shall mean the intermediate stockholding and preparation of Raw Materials for passing them on to a third party.

**§ 3  
Offers, purchase and/or order confirmation**

(1) Our offers for the acceptance of Raw Materials for purchasing, Processing and/or Disposal of the same shall be without obligation and without engagement as long as the purchase or order has not yet been confirmed by us in writing. The price may be subject to adjustment pursuant to § 5 of these Terms and Conditions. Any confirmation according to the above sentence 1 shall be deemed as having been accepted by the Supplier unless an objection is raised by it in writing within one week, no later, however, than by the time the Raw Material is delivered to us.

(2) Typing errors or calculation errors in the confirmation shall entitle us to withdraw from the contract entered into with the Supplier, if the Supplier objects to a correction of the contract. The Supplier shall not be entitled to claim any damages in such a case.

(3) The Supplier may not disclose any information made available by us within the framework of the business relationship to any third party without our express consent.

**§ 4  
Delivery, condition of Raw Material**

(1) Deliveries shall be made at the Supplier's expense and risk. Notice of delivery shall be given at least one day in advance, and delivery shall take place between 7.30 and 16.00 on workdays, unless another delivery time is expressly agreed.

(2) Should it not be possible to effect delivery at the agreed time, we shall be entitled to demand that delivery be effected at a later time.

(3) When delivering Raw Material, the Supplier shall observe the respective current version of the German Recycling Economy Law (*Kreislaufwirtschaftsgesetz*) / Waste Management Law (*Abfallgesetz*), Ordinance on Dangerous Substances (*Gefahrgutverordnung*) and ADR. As for the rest, delivery shall be effected in accordance with the express agreements made in the purchase or order confirmation. If the Supplier or its carrier fails to comply with the legal regulations, or if the delivery or the Raw Material delivered deviates from the contractual agreements, we shall be entitled to refuse acceptance, neither the Supplier nor its carrier being entitled to any claims against us as a consequence of our refusal. We reserve our right to claim damages, however.

(4) When being delivered, each consignment or lot of the Raw Material shall be clearly and unmistakably marked on the packing material and on the consignment note to be enclosed by the Supplier.

(5) The Supplier shall collect packing materials from us within 14 days of the discharge of the contents, unless they are used by us for returning the processed Raw Material or expressly agreed otherwise. We will notify the Supplier immediately upon completing discharging. On expiry of the deadline fixed, any packing materials not collected will be disposed of at the Supplier's expense.

(6) The delivery of Raw Materials the radioactivity of which is greater than the natural ambient radiation shall be forbidden. In case the Supplier nevertheless delivers to us any radioactive contaminated Raw Materials, it will be held liable for any damage arising as a result for us or any third parties. Any liability on our part for contributory default shall be excluded to the extent permitted by law, if we have accepted the Raw Material without having any knowledge of its radioactive contamination. We will not be obliged to check the Raw Material delivered for radiation. The Supplier shall in each case be obliged to immediately collect from us radioactively contaminated Raw Materials upon our first request.

(7) The Supplier guarantees that the Raw Material delivered by it is free from any substances which might lead to undesirable reactions, deflagrations, explosions or the like. Should the Raw Material delivered contain any substances of this type, the provisions of the above paragraph (6) shall apply accordingly.

(8) Moreover, the Supplier guarantees in respect of any delivery made that the Raw Material supplied and handed over by it is its sole property and free from third-party rights.

(9) In addition to this, the Supplier shall indemnify and hold us harmless upon our first request from any claims raised by a third party against us for violation of the provisions set forth in this § 4.

## **§ 5 Prices, sampling, analysis**

(1) We reserve the right to analyse any Raw Materials delivered. The results determined in such an analysis shall constitute the binding basis for accounting in accordance with the following provisions. Should the price determined in this way deviate from the previously agreed price, the price determined based on the values of the analysis shall apply.

(2) If an analysis is required in our view, we will notify the Supplier accordingly in advance. The Supplier shall inform us within 3 days of the receipt of this notice whether and to which extent it wishes to make use of its rights set forth in the following provisions.

(3) If the Supplier fails to respond within the period given in sub-clause (2), or if it waives its rights hereunder, we will carry out the sampling, preparation of samples, assaying and analysis in a fiduciary capacity for the Supplier. The results of this analysis will constitute a binding basis for accounting.

(4) The Supplier will be entitled either to witness the sampling, sample preparation, assaying and analysis or to have itself represented by an expert at its own expense.

(5) If we are requested by the Supplier to carry out only sampling and preparation of the sample in a fiduciary capacity for the Supplier, we will hand over a sample which is suited for an analysis to the Supplier. The Supplier may have its sample analysed at its own expense parallel to our analysis by an appropriately authorised impartial body. We will keep a sealed reserve sample for any arbitration analysis which might be required. The analysis values determined by the Supplier and by us will then be sent at a previously agreed date by registered mail to the respective other party such that the exchanged samples will be crossing one another en route to the other party's address.

(6) The Supplier or its representative will also be entitled to be already present during, and to participate in, the taking and preparation of the sample. In this case, the jointly taken sample will be divided after preparation, while a sealed reserve sample will be kept by us. In respect of the analysis, sub-clause (5) sentence 2, and in respect of the exchanging of the results, sub-clause (5) sentence 4 shall apply accordingly.

(7) If in the cases described in sub-clauses (5) and (6) differences occur between the analysis values determined by us and those determined by the Supplier, the parties shall attempt to resolve the deviations by mutual agreement. If no agreement can be reached, the parties will have an arbitration analysis performed, the result of which shall be final and binding, and which will be performed as set forth below:

(a) **Modalities of arbitration analysis:**

For having the arbitration analysis performed, both parties shall agree on an impartial and competent laboratory, which up to this time has not been engaged in sampling by order of either one of the contracting parties. The costs of the arbitration analysis shall be borne by the contracting party whose analysis values deviate most from the value determined in the arbitration analysis. In case the values of both parties deviate to the same extent, each party shall bear half of the costs incurred.

(b) **Evaluation of arbitration analysis:**

If the value determined in the arbitration analysis lies between the two analysis values of the contracting parties, accounting shall be performed based on the arithmetic mean between the value of the arbitration analysis and the analysis value lying closest to this value. If the arbitration analysis yields exactly the mean of the two previous analyses, this mean shall constitute the basis for accounting. If the value determined in the arbitration analysis is outside the range of the two previous analysis results, accounting will take place on the basis of the analysis value lying closest to the value of the arbitration analysis.

## **§ 6 Total liability**

(1) Unless expressly set forth otherwise in these Terms and Conditions, we do not accept – to the extent permitted by law – any liability for damages, irrespective of the legal nature of the claim made. This disclaimer of liability shall not apply to claims which are based on fatal or personal injury.

(2) If we are nevertheless held liable for any damages, the maximum amount to which we may be held liable shall be limited to the sum insured under our liability insurance.

(3) To the extent that our liability for damages is disclaimed or limited, this shall also apply to any personal liability for damages of the members of our staff, employees, representatives and vicarious agents as well as to any cases in which we are vicariously liable for their fault.

## **§ 7 Place of performance, jurisdiction, governing law**

(1) Our registered office in Aue shall be the place of performance for any liabilities arising under this contract.

(2) Aue shall be the place of jurisdiction for any legal proceedings arising from or in connection with this contract – including legal proceedings related to a bill of exchange or check. We shall also be entitled, however, to take the Supplier to court at the place of its registered office.

(3) All business relationships between the contracting parties shall exclusively be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention for the International Sale of Goods.

## **§ 8 Miscellaneous**

(1) Any claims to which the Supplier may be entitled under this contract, irrespective of their nature, may neither be assigned in full nor in part or transferred to a third party without our express written approval.

(2) Deviations from these Terms and Conditions or collateral agreements between the contracting parties shall require the written form to be effective. This requirement of the written form may also be changed only in writing.

(3) Should any provision of these Terms and Conditions be or become completely or partly ineffective, this shall not affect the validity of the remaining Terms and Conditions. The contracting parties undertake to replace the ineffective provision in such a case by a provision which comes as close as possible in economic respect to the ineffective one.

## **Section II: Purchase of Raw Material**

In respect of all cases in which Raw Material is supplied to us for the purpose of purchasing, the provisions of this Section II shall apply supplementary to the provisions of Section I. In case the provisions of Section II are in conflict with those of Section I, the provisions of Section II shall prevail over those of Section I.

## **§ 9 Prices and terms of payment applying in the purchasing of Raw Material**

(1) The purchase prices quoted by us will be plus any possibly levied Value-Added Tax at the applicable legal rate. Unless agreed otherwise, the purchase price for the Raw Material delivered within 10 days of the receipt of the purchase confirmation shall apply. We reserve the right thereafter to newly calculate the price in accordance with the market situation pursuant to § 315 BGB.

- (2) If the condition of the Raw Material handed over by the Supplier deviates from a binding analysis performed in accordance with § 5 or from the condition specified under the relevant contract, we will be entitled within a period of three weeks from the date at which the deviation has come to our knowledge to adjust the price accordingly to the actual condition of the Raw Material. We will inform the Supplier of the adjustment, indicating the reasons for the same.
- (3) We will effect payments within the term indicated in the purchase confirmation. This term will commence at the date at which the Raw Material has been delivered to us. In cases where an analysis as per § 5 is performed, the term will commence at the earliest at the date at which the binding result of the analysis has become available.
- (4) In cases where, following payment of the purchase price, circumstances arise which entitle us to adjust or reduce the purchase price, the Supplier shall refund to us the amount paid in excess within a period of 10 days from the receipt of a notice requesting refunding.
- (5) We will be entitled to set off any amounts payable by us to the Supplier against any claims we may have for any legal reason whatsoever against the Supplier. The Supplier on its part may only set off if Supplier's counterclaim is undisputed and recognised by us or if Supplier has a final and binding legal title.
- (6) If the Supplier is obliged to make payment to us, such payment shall be deemed as having been effected only when the amount in question is at our free disposal. Bills and checks will be accepted only as conditional payment.

#### **§ 10 Passage of title**

- (1) Title to the purchased Raw Material shall pass to us as soon as the Raw Material has been unloaded by the Supplier at our premises and we have satisfied ourselves that the Raw Material is neither radioactive nor contains any obviously explosive or other harmful substances.
- (2) Any reservation of title – whether ordinary, extended or otherwise – the Supplier may have in the Raw Material delivered to us for the purpose of purchasing shall terminate, and title to the Raw Material shall pass to us, as soon as Processing of the Raw Material has started.

#### **§ 11 Supplier's liability for defects**

- (1) Any claims we may have against the Supplier for liability for defects will expire by limitation not earlier than two years after title has passed to us.
- (2) The Supplier hereby waives the plea of delayed claim.
- (3) The Supplier shall reimburse to us any loss or damage resulting from defects in the Raw Material delivered.

### **Section III: Processing and/or Metallurgical Treatment**

In respect of all cases where Raw Material is supplied to us for the purposes of Processing and/or Metallurgical Treatment, the provisions of this Section III shall apply supplementary to the provisions of Section I. In case of conflict between the provisions of Section III and those of Section I, the provisions of Section III shall prevail over those of Section I.

#### **§ 12 Prices and terms of payment in case of placement of order**

- (1) If the Supplier places an order with us for the Processing and/or Metallurgical Treatment of the delivered Raw Material, our prices plus the respective applicable legal Value-Added Tax shall apply.
- (2) The price charged for the Processing of Raw Material and subsequent return of the Commodity obtained therefrom will be ex works Aue. Packing and transport of the Commodity to be returned will be carried out at Supplier's expense and account. In cases where transportation is organised by us, we will be entitled, but not obliged, to insure the Commodity at the Supplier's account.
- (3) Any payments to be made by the Supplier shall be effected within the term specified in the order confirmation, which term will commence from the date of receipt of the order confirmation by the Supplier, without any prejudice to the execution of the order by us. If we are obliged to make advance deliveries, we expressly reserve the right to demand cash in advance in cases where the Supplier is in default of payment under former transactions or where there are doubts as to its credit standing.
- (4) The provisions of § 9 sub-clause (5) shall apply accordingly. If the supplier defaults the payment, we are entitled to withdraw from the contract at the end of an adequate extension. In this case the supplier is obliged to take back the material. If the supplier fails to take back the material despite any payment reminders, we are entitled to deliver the material back to the supplier on its own expenses.
- (5) Notwithstanding any provisions providing otherwise, we shall be entitled to first charge up payments made by the customer against amounts payable to us by the customer under former transactions. In cases where costs have already been incurred and interest accrued, we shall be entitled to charge up payments received first against the costs, then against the interest and finally against the main payment.

#### **§ 13 Return after Processing, passage of title**

- (1) In respect of any Processing order placed with us, we reserve the right to supply a corresponding quantity of the same type and quality of the Commodity to be produced. We shall not be obliged to return precisely the Commodity produced from the Raw Material delivered unless an express agreement to this effect has been entered into in writing.
- (2) Unless we are obliged to return a Raw Material or Commodity to the Supplier, title to the Raw Material or Commodity will pass to us in accordance with § 10.
- (3) Title to the entire Raw Material will pass to us in accordance with § 10, when we hand over to the Supplier a Commodity or processed Raw Material of the same type and quality in accordance with sub-clause (1).
- (4) Should it subsequently turn out that, in exercising our right pursuant to sub-clause (1), we have returned more Commodity to the Supplier than had actually been contained in the delivered Raw Material or more than could be produced therefrom, the Supplier shall be obliged to return to us the Commodity supplied in excess within 3 weeks of the receipt of the respective notice. If it fails to meet this deadline or refuses to hand over the excess Commodity, a purchase contract for the excess quantity concerned shall be deemed to have been concluded; we will fix the price to be paid by the Supplier in such a case in accordance with § 315 BGB.

#### **§ 14 Terms for delivery, defaults in performance**

- (1) If an order for the Processing of the Raw Material delivered is placed with us, the terms for Processing or delivery possibly indicated in the order confirmation will be without obligation unless expressly referred to as being binding.

(2) Processing and delivery terms will commence only upon delivery of the Raw Material at our premises and, where cash in advance has been agreed, principally only upon receipt of the payment pursuant to § 9 sub-clause (6). If an analysis is carried out in accordance with § 5, the term will commence at the earliest at the date at which the results of the analysis become available.

(3) The delivery deadline shall be deemed to have been met when the Commodity has been dispatched from our premises or notice has been given to the Supplier that the Commodity is ready for shipment. The Supplier shall collect the Commodity within one week of the receipt of our advice of dispatch; if the Supplier fails to meet this deadline, it will be deemed to have defaulted in acceptance.

(4) If the Supplier defaults in acceptance, it shall reimburse to us any costs or damage arising for us as a result of the default. If the Supplier fails to accept within a respite of at least 8 days granted to the Supplier, we shall be entitled to use the Commodity staged for collection by the Supplier for other purposes.

(5) If the Processing of the Raw Material or delivery of the Commodity is delayed due to circumstances of Force Majeure or for any other reasons not attributable to us, the deadline fixed for Processing or delivery shall be extended accordingly. If no end to the delay can be foreseen, either contracting party shall be entitled to transform the contractual relationship into a contract for the purchase of the delivered Raw Material; in this case, the provisions of Section II shall apply to this contract in lieu of the provisions of Section III.

(6) If we default in delivery for reasons other than those mentioned in sub-clause (5), the Supplier shall be entitled upon expiry of a respite of at least 2 weeks granted to us to withdraw from the contract or to claim damages in lieu of performance. The Supplier's right to withdraw from the contract shall lapse as soon as Processing of the delivered Raw Material has commenced.

(7) If, on starting of Processing, it turns out that Processing is not possible or is possible only at an unreasonably high expenditure, we shall be released from the obligation to perform. We will notify the Supplier immediately of this fact and refund the price to it, if the price has already been paid to us.

(8) The Supplier will be entitled to claim damages for default of delivery or for either of the cases mentioned in sub-clause (7) only in cases of intent or gross negligence. § 6 sub-clause (3) shall apply accordingly. In cases of default, the amount payable by us under this obligation to pay damages will be limited to 3 % of the value of the delayed delivery for each complete week of delay, the total amount payable being limited to a maximum of 15 % of the delivery value.

(9) If the Raw Material to be processed has been delivered to us with packing materials, we will also use these packing materials for delivery to the extent possible. If this is not possible, § 4 sub-clause (5) shall apply accordingly.

(10) The price and performance risk shall pass to the Supplier as soon as the outgoing Commodity is dispatched from our premises. This shall apply also if we carry out the transport. If collection of the Commodity by the Supplier is delayed for reasons not attributable to us, the risk shall pass to the Supplier if the Commodity has not been collected within one week of the receipt of the advice of dispatch.

## § 15

### Liability for defects of the Commodity

(1) Commodity received by the Supplier shall be inspected immediately by the Supplier for correctness, completeness and freedom from defects. Obvious non-conformities shall be advised to us immediately, hidden defects within one week of their discovery. Otherwise, the claim shall be deemed as being delayed pursuant to § 377 of the German Commercial Code (HGB) and any claims the Supplier may have under the liability for defects provisions shall become null and void.

(2) We will be liable in case the Commodity supplied by us has not been processed in accordance with the respective contract. Any other liability shall be excluded. We will not accept, in particular, any liability for defects attributable to the condition of the Raw Material supplied to us. We also cannot be held liable for any damage which has not occurred on the supplied Commodity itself, in particular, for lost profits or any other economic losses suffered by the Supplier. This disclaimer of liability will not apply to cases of intent or gross negligence as well as in cases where liability is mandatory by law. § 6 sub-clause (3) shall apply accordingly.

(3) Our liability for defects shall be limited to cases in which a foreseeable typical damage occurs. Our maximum liability shall be limited to the amount charged for the Processing of the Raw Material supplied to us.

(4) To enable us to determine whether or not we will be liable for a defect, the Supplier shall, at our discretion, either make available to us an adequate quantity of the Commodity which has been delivered by us and which is alleged to be defective, or send such an adequate quantity to our registered office.

(5) If we are liable for the defect, we will, at our discretion, either supply conforming Commodity in exchange for the defective Commodity, rectify the defect or reduce the price accordingly.

(6) The Supplier's claims under the defect liability provisions will expire by limitation one year after the date of the passage of risk in the sense of § 14 sub-clause (10).

(7) Notices of defects shall not affect the validity of our claim for payment, unless the defect has been acknowledged by us in writing or has been established in a final and binding manner.