



Metallverwertungsgesellschaft
Entsorgungsfachbetrieb

- Nichteisenmetalle
- Neumetalle
- Metallrückstände

Terms and Conditions (T&Cs) Metallverwertungsgesellschaft mbH Gottenheim:

General Regulations

The following provisions are to be understood as General Regulations applying both to our Purchasing T&Cs and our Sales T&Cs.

1. Applicable regulations

Insofar as not explicitly agreed otherwise and not ruled out by our Purchasing T&Cs or Sales T&Cs, the following regulations apply in their currently applicable versions:

- a) for scrap metal trading (other than 1c): the "trade specifications for deliveries of non-alloy iron and steel scrap" (the Cologne Agreement) / "*Handelsübliche Lieferbedingungen für die Lieferung von unlegiertem Eisen- und Stahlschrott*" (*Kölner Abkommen*),
- b) for non-ferrous metal transactions: standard metal trade practices,
- c) for transactions with foundries: the "trade specifications for deliveries of cast iron and steel scrap from foundries" (the Düsseldorf Agreement) / "*Handelsübliche Bedingungen für die Lieferung von Gussbruch und Gießereistahlschrott*" (*Düsseldorfer Abkommen*),

With regard to contracts established on the basis of one of the Incoterms contractual forms, the Incoterms apply in their currently applicable version. However, the trade clauses apply only to the extent that no different provisions are set forth in these specifications, in our Purchasing or Sales T&Cs or in any other special agreement. The specifications referred to above will be made available separately on request



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2. Applicable legislation

German legislation shall apply to all legal relationships. Foreign legislation and the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods (CISG) are not applicable. The Uniform Law on the International Sale of Goods (*Gesetz über den internationalen Kauf beweglicher Sachen*) of 17.07.1973 is similarly not applicable.

3. Place of performance and jurisdiction

The place of performance for deliveries and for payments and the place of jurisdiction are our company headquarters. At our discretion, we are entitled to also file any claims against a contractual partner at his place of jurisdiction.

4. Data protection

Pursuant to §26 of the German Data Protection Act (*Bundesdatenschutzgesetz*), it should be noted that data recorded in connection with business transactions is stored in databases.

Purchasing Terms and Conditions

1. General provisions

For all orders issued by us, the following terms and conditions apply in addition to the General Regulations listed above. Any deviating terms and conditions in a Supplier's offer or acceptance of order (order confirmation) apply only when they are expressly accepted by us in writing, even if there is no objection on our part.

2. Orders

To be legally binding, orders or agreements must be issued or confirmed by us in writing. They shall be considered as accepted without change insofar as no declaration stating otherwise is in our possession within 10 days. This provision similarly applies to the implementation of side agreements.



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3. Prices

The prices listed in our orders are binding. Prices include free delivery to the place of use specified by us. Freight and other costs will not be borne by us.

4. Packaging

Packaging is taken back free of charge by the Supplier in accordance with the applicable packaging regulations. Any different provisions must be confirmed by us in writing.

5. Shipping

All shipping papers must list the order number, subject and date of issue. Any costs incurred by us due to delivery to the wrong place are to be borne by the Supplier; our minimum charge is €40.00.

6. Force majeure and other impediments

Force majeure incidents entitle us to postpone the fulfilment of acceptance obligations until the impediment has been removed and a suitable period to restart operations has been granted. Should the execution of a contract become unacceptable for us, we reserve the right to withdraw from the contract. Force majeure is construed as covering all unforeseen circumstances preventing us or making it very difficult for us to fulfil our acceptance obligation. These include currency and trade policy measures and other state measures, strikes, lock-outs, breakdowns and obstruction of transport routes, regardless of whether these circumstances happen on our premises or elsewhere.

7. Delivery dates

Agreed delivery dates and deadlines are legally binding in the sense of a fixed-date transaction. Delivery delays are to be reported to us immediately, with reasons stated. In the case of a delivery delay, we are – without prejudice to our other rights – entitled to withdraw from the contract without notice or to claim damages for non-fulfilment.



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8. Advice of delivery

On leaving the place of origin, a specific advice of delivery for the shipment is to be communicated to us in such a way that it arrives before the shipment reaches us. The advice of delivery must contain an exact list of the goods being delivered, listing the quantity, dimensions, weight, grades and analyses, together with our order number.

9. Invoicing and payment

Following delivery, invoices are to be submitted to us in triplicate. With regard to monthly deliveries, the invoice is to be sent at the latest on the third working day of the month following the month of delivery. Invoices are to be based on the quantities, dimensions, weights, grades and analyses determined on receipt. The recipient's weighing slip acts as proof of weight, even when weighing data is recorded automatically.

When not agreed otherwise, we pay invoices in the second half of the month following the month of delivery, insofar as such invoices have been received by the deadline stated above. When payment is made before the due date, we deduct 3% discount from the invoiced amount.

10. Assignment

The Contractor may not assign his contractual rights either in whole or in part to third parties without the express written consent of the Orderer; the Orderer will not refuse consent without good cause.

11. Warranty

Statutory warranty provisions apply. The Supplier assumes liability for any impairment of the property rights of third parties through the delivery and use of the goods. Should a non-visible defect arise following acceptance, the period of limitation begins with the discovery thereof. Insofar as we are responsible for checking performance and giving notice of defect pursuant to §377.1 HGB (the German Commercial Code), we shall have two weeks' time to perform such. Notice of any defect determined at a later date is to be given, pursuant to §377.3 HGB, within two weeks of discovery thereof. Should the



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Supplier not meet his warranty obligations, we are – without prejudice to our other rights – entitled to set a deadline and, when this is not met, to remedy / have remedied the defect or damage at the expense of the Supplier. The Supplier shall already assign to us - for fulfilment purposes - all claims he may make against his own suppliers in connection with the delivery of defective goods. In order to pursue such claims, the Supplier shall hand over to us all necessary documentation. On accepting the contract, the Supplier declares that the scrap to be delivered has been examined by him with regard to the existence of explosives, objects liable to explode and sealed hollow containers (Explosives Declaration/*Sprengstofffreiheitserklärung*).

12. Reservation of title

With regard to the rights to reservation of title of the Supplier, his terms and conditions shall apply, conditional on ownership of the purchased goods being transferred to us upon payment thereof, and that accordingly the extended forms of the so-called current account retention and multiple reservation (*Kontokorrent-und Konzernvorbehalt*) shall not apply.

13. Assumption of risk

Even when free delivery has been agreed, we will assume the payment risk only after having accepted delivery.

14. Drawings, plans

All drawings and other documentation made available by us remain our property and may not be used otherwise without our written approval. They are to be automatically returned to us with the offers or after the successful completion of an order.

Sales Terms and Conditions

1. General provisions

Our deliveries and services are provided exclusively under the following terms and conditions, including the conditions listed hereinafter. These apply to all future deliveries and services, even when not explicitly re-stated. Deviating terms and conditions specified by the Purchaser are explicitly rejected. They are not recognised even if we have not contradicted them following our receipt thereof. At the latest on the Purchaser's acceptance of the goods or services provided by us, our Sales T&Cs are deemed to have been accepted. When terms deviating from these Sales T&Cs are agreed, the provisions of these Sales T&Cs remain in application insofar as they are not explicitly ruled out.

2. Offers and contract conclusion

2.1 Until otherwise agreed in writing all offers are non-binding and subject to prior sale. Contracts and side agreements become legally binding once they have been signed by us.

2.2 Deliveries and services protected by property rights may not be resold without our consent.

3. Delivery schedules

The delivery schedules stated by us are non-binding. Delays do not result in a default and exclude any claims for damages and/or withdrawal from the contract. Delivery schedules begin with the date of our order confirmation, though not before all details of the contract have been clarified and all necessary German and foreign official documents have been submitted to us. Delivery schedules and dates refer to the date of shipping. They are deemed to have been met once notification has been given that a shipment is ready for shipping, even if unforeseen circumstances prevent it being actually shipped. Force majeure incidents entitle us to postpone shipment until the impediment has been removed and a suitable period to restart operations



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has been granted. Should the execution of a contract become unacceptable for us, we reserve the right to withdraw from the contract. Force majeure is construed as covering all unforeseen circumstances preventing us or making it very difficult for us to perform our delivery obligation. These include currency and trade policy measures and other state measures, strikes, lock-outs, breakdowns and obstruction of transport routes, regardless of whether these circumstances happen on our premises or elsewhere.

4. Weighing

The weight is determined at our depot or the plant from where the goods are shipped by an official weighing station. The shipped weight is used for invoicing. The weighing slip produced on shipment from the plant acts as proof of weight, even when weighing data is recorded automatically.

5. Shipping

All shipments take place at the Purchaser's risk, at our discretion and without us taking any responsibility for the most cost-effective and fastest shipping mode. Goods notified as being ready for shipping must be collected immediately. Where this is not the case, we are entitled to store the goods at our discretion at the expense and risk of the Orderer, and to invoice the goods as delivered. On handing over the goods to the freight company, all risk (including the risk of confiscation) is transferred to the Purchaser, i.e. also for fob and cif transactions. Insofar as not stated otherwise in these terms and conditions, Incoterms apply when interpreting the various sales provisions.

6. Liability for defects

6.1 Decisive for the contract-compliant condition of the goods is the point of time they leave the depot or the plant from where they are shipped.

6.2 For a Purchaser to exercise warranty rights, he must have properly carried out his examination and notification obligations under §§377 and 378 HGB and the present regulations. Notification of a defect does not entitle the Orderer to not pay the purchase price or to deduct counter-claims. Warranty claims expire one month after written rejection of the complaint by us.



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- 6.3 Where a complaint is justified and has been submitted in due time, we will take back the defective goods and replace them with flawless goods. Taking due account of the Purchaser's interests, we are also entitled to remedy the defects. Where remedying the goods was unsuccessful or where no replacement was possible, the Purchaser is entitled to withdraw from the contract or to demand a price reduction. Where the defect is minor, the Purchaser may only request to have the price reduced. The costs associated with remedying the defect or replacing the goods are borne by us in the context of our general liability under Item 7.
- 6.4 As long as the Purchaser does not provide us with the opportunity of confirming the defect, in particular not making available the goods or samples in question on request, any claim that the goods are defective are deemed to be unsubstantiated.
- 6.5 Goods sold as Ila material have no practical value, and are solely suitable for recycling.
- 6.6 Further claims are excluded in accordance with Item 7. This applies in particular to any claims for compensation for damage not to the goods themselves (consequential damages).

7. General limitation of liability

- 7.1 We assume liability – also with regard to our executives and other agents – for non-compliance with contractual and non-contractual obligations, in particular on account of impossibility, delays, negligence on concluding the contract and tort, only in cases of wilful intent or gross negligence, limited to the contract-typical damages foreseeable at contract conclusion.
- 7.2 This exclusion does not apply to any wilful breach of fundamental contractual obligations insofar as achieving the purpose of the contract is endangered, nor to cases of statutory liability, in particular under the German Product Liability Act (*Produkthaftungsgesetz*). The rules on the burden of proof remain unaffected.



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7.3 Contractual claims made against us by the Purchaser in connection with the delivery of goods expire 12 months after delivery thereof to the Purchaser. This deadline also applies to goods which in normal practice were used in construction and whose defectiveness has caused a building to be defective, unless such use was agreed in writing. Our liability for wilful and grossly negligent breaches of obligations as well as the limitation of statutory claims under a right of recourse remains unaffected. In cases of subsequent fulfilment, the period of limitation does not restart.

8. Retention of title

8.1 Our deliveries remain our property until all our claims vis-à-vis the Purchaser have been met, whatever the legal basis. With regard to current accounts, the retained title acts as collateral for the balance of claims. Any processing of the goods on our behalf is done without acquisition of title pursuant to § 950 BGB (German Civil Code), without any commitment on our part. Where our goods are mixed or combined with other goods (§§947 and 948 BGB), our co-ownership of the mixed or combined output in a ratio of the invoiced value of our input to the overall invoiced value is deemed as agreed.

8.2 The new item resulting from the processing is deemed to be owned by us in the sense of these terms and conditions.

8.3 The Purchaser may only sell or process our property in the ordinary course of business under his normal terms and conditions and only as long as he is not in default. He is only entitled to resell goods for which we retain the title when the payment due for the resold goods and all ancillary rights pursuant to Items 8.4 and 8.5 are passed on to us. He may not otherwise dispose of the goods for which we retain the title.

8.4 All claims accruing to the Purchaser from any resale of goods for which we retain the title are immediately assigned to us, regardless of whether such goods are sold with or without agreement, whether mixed or combined with other goods, or whether they are sold to one or more customers. The assigned claim acts as collateral for the value of the sold goods for which we retain the title. Insofar as the value of this collateral exceeds the secured claim by more than 10%, we are obliged, when requested by the Orderer, to release divisible collaterals of our choice.



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- 8.5 Should the Orderer sell the goods for which we retain the title together with other goods not belonging to us (with or without further processing), the claim resulting from this transaction is only assigned to us to the amount of our invoice.
- 8.6 The Orderer is however entitled – insofar as he meets his payment obligations – to take receipt of the claims resulting from this transaction which were assigned to us. Conversely, he may not dispose of such claims through assignment. At our request, he is obliged to inform his customer of the assignment existing on our behalf.
- 8.7 It is not permitted to pledge or assign delivered goods for which we retain the title. Any third-party access to our property, e.g. seizures or other adverse effects, is to be reported to us immediately in writing.
- 8.8 Where goods for which we retain the title are used by the Purchaser for performing a service contract or a provision of materials contract, items 8.4 to 8.7 apply accordingly to the claims resulting from such contract.
- 8.9 Where retention of title or assignment is not legally effective under the legislation of the place where the goods are located, the collateral equivalent to retention of title or assignment shall apply. Where the active involvement of the Purchaser is required, he is obliged to take all measures necessary for substantiating and maintaining such rights.

9. Payment terms

- 9.1 Payment of our invoices shall be made by the agreed due date in cash or by bank transfer to our bank account free of charge and without any deductions. The Purchaser may only deduct undisputed or legally established claims from the amount due; any such deductions must derive from the same contractual relationship.
- 9.2 With regard to the conditions under which the Purchaser is deemed to be in default, the provisions of §284.1 and 284.2 BGB shall apply instead of §284.3 BGB. In the case of the due date being exceeded, at the latest after sending a payment reminder, we are entitled to charge interest at the respective bank rates for overdrafts, at minimum at a rate of 8% above the base rate. We retain the right to file further claims for the damage caused by the default. We are entitled to charge an additional €3.00 for each payment reminder sent.

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Sitz der Gesellschaft: Gottenheim
Amtsgericht : Freiburg (Breisgau), HRB 1734
Geschäftsführer: Bernhard Hunn, Manfred Leber
USt-IdNr: DE 142213487



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9.3 Non-compliance with these payment terms or circumstances having a negative effect of the Purchaser's creditworthiness shall result in our invoices becoming immediately due. Payment in advance will be required for all goods still to be delivered. No resale, combination, mixing, processing or other handling of delivered goods for which we retain the title is permitted. The Purchaser agrees in advance that such goods may be repossessed.

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Sitz der Gesellschaft: Gottenheim
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