

# General Terms and Conditions (Sales) of Scholz Recycling AG & Co. KG as they relate to contractors

## Art. 1 Applicability of terms and conditions

(1) Scholz Recycling AG & Co. KG's deliveries, services and quotations shall be exclusively in accordance with these business terms and conditions. These shall therefore also apply in the then prevailing version for future contracts for the sale and/the delivery of movables with the same purchaser, even if they are not once again expressly agreed. Counter confirmations by the customer with reference to his own terms and conditions of business or purchase are hereby expressly contested. Our terms and conditions of sale shall also apply even if we unconditionally make delivery to the customer despite being aware of customer terms and conditions that conflict with or differ from our terms and conditions.

(2) Departures from these business terms and conditions shall only be effective if confirmed in writing by Scholz Recycling AG & Co. KG.

## Art. 2 Quotation and conclusion of contract

(1) Scholz Recycling AG & Co. KG's quotations are non-binding and without obligation. To be legally valid, declarations of acceptance and all orders will need to be confirmed in writing or by telex by Scholz Recycling AG & Co. KG. The same applies for additions, amendments or supplementary agreements.

(2) If subsequent to accepting the order we should become aware of facts that justify legitimate doubts about the purchaser's solvency, we shall be entitled, prior to delivery, to demand payment in full or the giving of appropriate surety or else to withdraw from the contract after having set a deadline that has expired without effect – all rights reserved, such as for example compensation. In addition to an existing occurrence of arrears, proof of a significant deterioration in the purchaser's financial circumstances shall be deemed to exist if there is a reduction in the latter's credit limit with our trade credit insurer or – having regard to the due care and diligence of a prudent merchant - information furnished by a bank, credit agency, or company maintaining business relations with the purchaser or the like. If delivery has already been made, the invoiced amounts in question shall be due for payment step by step immediately regardless of the agreed payment terms in exchange for the surrender of securities, acceptances etc.

(3) All performance data such as drawings, diagrams, dimensions, weights or the like shall only be binding if they are expressly identified as being so.

(4) Scrap is a secondary raw material. Purity in terms of quality and material shall be confined to the ability to sort the material by visual appearance and provenance, which shall be performed with due professional care. A guarantee as to type or alloy purity is not possible. No further quality demands shall be entertained.

## Art. 3 Prices

The prices quoted by Scholz Recycling AG & Co. KG are net prices excluding VAT. They are based on the freight tariffs prevailing at the time. The emergence and increase of public dues and - where delivery has been agreed freight free - the increase in freight costs will trigger a corresponding increase in the contract price. If freight free delivery has been agreed, the agreed price shall apply only in the event of normal, unimpeded transport.

## Art. 4 Delivery and performance time

(1) Scholz Recycling AG & Co. KG shall be entitled at all times to partial deliveries and partial performance of services.

(2) Scholz Recycling AG & Co. KG shall not be liable for delays in delivery and the performance of services as a result of force majeure and events that make delivery materially more difficult or impossible for Scholz Recycling AG & Co. KG where this is not its own fault or attributable to it, such as for example the subsequent occurrence of difficulties in procuring materials, disruption to operations, strike, lockout, government decrees etc, even if they happen to Scholz Recycling AG & Co. KG's suppliers or subcontractors, provided that Scholz Recycling AG & Co. KG shall not be responsible for these circumstances. They will entitle Scholz Recycling AG & Co. KG to postpone the delivery or performance of the service by the duration of the impediment plus a reasonable start-up time.

(3) should an impediment as construed in paragraph 2 last longer than three months, both parties shall be entitled to withdraw from the as yet uncompleted portion of the contract. The contractual partner may also withdraw from the entire contract if the partial service performance already rendered is not reasonable.

## Art. 5 Passing of risk, shipment

(1) Unless the order confirmation states otherwise, delivery shall be agreed "ex works", i.e. - unless otherwise agreed - risk shall pass to the contractual partner no later than 3 days after provision of the goods and notification that the goods are ready to be shipped, as soon as the vendor has delivered the article to the carrier, haulage contractor or whichever other person or establishment has been appointed to carry out the shipment.

(2) In accordance with the packaging regulations, transport and all other packaging will not be taken back, with the exception of pallets. The customer shall be obliged to ensure that packaging is disposed of at his own expense.

(3) If delivery "ex works" is not agreed, the means of transport and type of shipment shall be chosen by Scholz Recycling AG & Co. KG.

## Art. 6 Calculation of weights and quantities

The weights and/or quantities determined by Scholz Recycling AG & Co. KG shall prevail when ascertaining weights and quantities. The contractual partner shall be free to make his own determination of weights and quantities.

## Art. 7 Claims for defects

(1) Complaints in respect of obvious defects are to be notified immediately by the contractual partner but no later than within one week of receipt of the goods at the destination. Defects that cannot be detected within this period notwithstanding careful inspection are to be notified to Scholz Recycling AG & Co. KG in writing immediately they are discovered. If the customer fails to discharge his obligation to inspect and give notice of defects, Art. 377 of the German Commercial Code shall apply.

(2) In the event of a defective delivery, the purchaser shall - at Scholz Recycling AG & Co. KG's discretion - be entitled to have the delivery replaced or the defect remedied (subsequent performance). Should the subsequent performance fail, the customer may at his discretion demand that the purchase price be rebated or else withdraw from the contract. The assertion of claims for compensation shall be in accordance with Art. 10.

(3) The period of limitation for claims for defects shall be one year from the moment of passage of risk.

## Art. 8 Retention of title, assignment of security and ceding of security deposits

(1) Until all accounts receivable that are due to Scholz Recycling AG & Co. KG now or in future, for whatever legal reason, have been settled Scholz Recycling AG & Co. KG shall be granted the following securities, which it will surrender on demand provided that their realisable value exceeds the accounts receivable in the long term by more than 10%; the choice of securities to be surrendered shall be incumbent on Scholz Recycling AG & Co. KG.

(2) Title to the goods shall remain with Scholz Recycling AG & Co. KG. Processing or transformation shall always be performed for Scholz Recycling AG & Co. KG as the manufacturer but without obligation for it. If the purchased goods are processed with other objects not belonging to Scholz Recycling AG & Co. KG, Scholz Recycling AG & Co. KG shall acquire co-ownership of the new goods pro rata to the value of the purchased goods (total invoiced amount, including VAT) relative to the other processed objects at the time the processing took place. The same shall apply to the article created as a result of the processing as the purchased goods delivered under reserve. Goods to which Scholz Recycling AG & Co. KG has (shared) title shall hereinafter be referred to as goods subject to retention of title.

(3) If the goods subject to retention of title are inseparably combined with objects that do not belong to us, Scholz Recycling AG & Co. KG shall acquire co-ownership in the new article pro rata to the value of the goods subject to retention of title (total invoiced amount including VAT) relative to the other combined objects at the time they were combined. If the combining is done in such a way that the customer's article is to be construed as the principal article, it shall be deemed to have been agreed that the customer shall transfer ownership to Scholz Recycling AG & Co. KG on a pro rata basis. The customer shall hold the sole ownership or co-ownership so created in safe custody for Scholz Recycling AG & Co. KG.

(4) The customer shall also assign to Scholz Recycling AG & Co. KG those claims designated to secure Scholz Recycling AG & Co. KG's claims against it that have come into being with respect to a third party as a result of the goods subject to retention of title being combined with a property.

(5) The customer shall be obliged to treat the goods subject to retention of title with care; specifically he shall be obliged to insure them adequately at his own expense against loss or damage caused by fire, water and theft. If maintenance and inspection work is required, the customer must perform this work in good time and at his own expense.

(6) The customer shall be entitled to process the goods subject to retention of title in the regular course of business and sell them on subject to retention of title provided he is not in default. Pledges or assignment as security shall not be permitted. The customer shall already fully assign the receivables arising from the onward sale or from some other legal reason (insurance, unlawful act) in respect of the goods subject to retention of title to Scholz Recycling AG & Co. KG as security. In the event of onward sale, the customer shall be obliged to divulge his purchasers' name and address to Scholz Recycling AG & Co. KG at any time upon demand. Scholz Recycling AG & Co. KG shall irrevocably authorise customers to collect the receivables assigned to Scholz Recycling AG & Co. KG in their own name on their behalf. This collection authorisation can only be revoked if the customer fails to honour his payment obligations in the proper fashion.

(7) In the event of the goods subject to retention of title being seized by third parties, the customer shall draw attention to Scholz Recycling AG & Co. KG's ownership or co-ownership and immediately notify the latter.

(8) Should the customer commit a breach of contract - in particular late payment - Scholz Recycling AG & Co. KG shall be entitled to take possession of the goods subject to retention of title and if necessary demand assignment of the customer's claims for surrender against third parties. Scholz Recycling AG & Co. KG's recovery of the goods subject to retention of title shall not constitute grounds for withdrawing from the contract. Having recovered the purchased goods, Scholz Recycling AG & Co. KG shall be authorised to dispose of them, the disposal proceeds shall be applied to the customer's liabilities less reasonable disposal costs.

(9) The retention of title in accordance with the aforementioned provisions shall remain in being even if Scholz Recycling AG & Co. KG's individual receivables are included in a running account.

(10) Payments by bill of exchange or cheque shall only be accepted on account of performance, the agreed retention of title shall not be affected. Retention of title shall remain in force in the cheque-bill of exchange transaction until the last bill of exchange has been encashed.

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## Art. 9 Payments

(1) Unless otherwise agreed, Scholz Recycling AG & Co. KG's claims for payment shall be due without deduction immediately after the agreed service has been rendered and the invoice has been received. In the case of the partial performance of services, Scholz Recycling AG & Co. KG shall be entitled to invoice the contractual customer for this partial performance as well.

(2) In the event of a payment deadline being agreed, it shall be calculated, along with any interest calculations, by reference to the delivery date as the effective date. As regards payment, each order shall be deemed to be a transaction in its own right.

(3) Notwithstanding any customer provisions to the contrary, Scholz Recycling AG & Co. KG shall be entitled to apply payments in accordance with Art. 366 para. 2 of the German Civil Code (BGB). If costs or interest have already been incurred, Scholz Recycling AG & Co. KG shall be entitled to apply payments first to the costs, then to interest and finally to the principal sum (Art. 367 para. 1 German Civil Code).

(4) A payment shall not be deemed to have been made until such time as Scholz Recycling AG & Co. KG is able to avail itself of the amount. Where cheques are involved, payment shall not be deemed to have been made until the cheque has been finally and unconditionally cashed.

(5) Payments by bill of exchange shall require Scholz Recycling AG & Co. KG's express prior consent. All bill of exchange charges shall be for the purchaser's account. Acceptance of bills of exchange does not imply an extension of the underlying receivable.

(6) Cash payments to Scholz Recycling AG & Co. KG shall only be deemed to have been discharged if they were made to persons in possession of written collection authorisation.

(7) Should the customer fall into arrears Scholz Recycling AG & Co. KG shall be entitled to demand interest 8 percentage points above the prevailing base rate prior to the prerequisites of the payment default coming into effect. The right to assert further damages remains.

(8) Should the customer fail to honour his payment commitments, in particular if a cheque cannot be cashed, if he suspends payment, if a bill of exchange is protested or Scholz Recycling AG & Co. KG becomes aware of other circumstances which call into question the customer's creditworthiness, Scholz Recycling AG & Co. KG shall be entitled to declare the entire outstanding debt to be due, even if it has accepted (other) cheques. In this case, Scholz Recycling AG & Co. KG shall also be entitled to demand that the customer put in place appropriate security (e.g. in the form of a bank guarantee).

(9) The customer shall only be entitled to offset or withhold, even if a defect has been notified or counter claims are being asserted, if the counter claims have been legally determined or acknowledged in writing.

(10) Scholz Recycling AG & Co. KG shall be entitled to assign claims arising from the agreed business relationships.

## Art. 10 Limitation of liability

(1) Scholz Recycling AG & Co. KG shall be liable to the customer for damages to the full extent according to statutory regulations in the event of deliberate or grossly negligent breaches of duty (including malice), death or injury to body and health where Scholz Recycling AG & Co. KG has expressly assumed a guarantee or procurement risk or in the event of liability under the Product Liability Act.

(2) Beyond the aforementioned instances, Scholz Recycling AG & Co. KG shall only be liable in the event of the negligent violation of essential contractual obligations. Scholz Recycling AG & Co. KG's liability in this case shall however be restricted to be typical, foreseeable loss or damage. Essential contractual obligations are such obligations as protect the customer's essential contractual positions, which the very substance and purpose of the contract is required to procure him; moreover, essential contractual obligations are those without fulfilment of which the contract could not be properly executed at all and which the customer regularly relies on, and is entitled to rely on, to be honoured.

(3) Otherwise, liability shall be excluded.

## Art. 11 Jurisdiction and applicable law

(1) The non-standardised laws of the Federal Republic of Germany shall apply. The provisions of the Vienna UN Convention of 11.04.80 on Contracts for the International Sale of Goods (UN CISG) and the provisions of International Private Law (IPR) shall not apply.

(2) The place of fulfilment and exclusive place of jurisdiction for all disputes arising, directly or indirectly, from the contractual relationship shall be Essingen. (Depending on the subject matter jurisdiction. District court Aalen, regional court Ellwangen.)

## Art. 12 Final provisions

Should one provision in these business terms and conditions or within the context of other agreements be or become invalid, the validity of all of the remaining provisions shall not be affected. Invalid provisions are to be replaced by those that most closely approximate the commercial purpose being pursued by the provision.

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