



SMV Wiederkehr Recycling

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General terms and conditions of the Wiederkehr Group

1. Scope and applicability

1.1. These general terms and conditions (hereinafter 'T&Cs') apply to all offers, contracts and commercial transactions including ancillary services within the scope of the Wiederkehr Group's business operations, namely: Wiederkehr Recycling AG (Waltenschwil, Switzerland), AVO Wiederkehr Recycling AG (Schwarzenbach, Switzerland), SMV Wiederkehr Recycling GmbH (Lauchringen, Germany) and SCMR Wiederkehr Recycling GmbH (Lutherstadt Eisleben, Germany) (hereinafter: Wiederkehr).

Wiederkehr has business relationships with both suppliers and customers (hereinafter collectively: Customers).

The current and latest version of the T&Cs with respect to any contractual relationship with Wiederkehr is available at <http://www.wierec.com>. The German version is binding. Translations of these T&Cs into other languages are for information purposes only.

1.2. On conclusion of contracts between Wiederkehr and the seller/buyer of material and recipients of services ('Customers'), the legal relationships are based on these general terms and conditions ('T&Cs').

1.3. The term 'Material' used in the T&Cs refers to any material traded as part of the relationship between Wiederkehr and the Customer (including scrap metal, iron, metals, waste, raw materials, etc.) and equipment (press containers, containers, etc.).

1.4. Agreements made between Wiederkehr and the Customer that differ from the T&Cs must be made in writing.

1.5. Wiederkehr is permitted to make changes to the T&Cs at any time and these shall apply to existing contractual relationships, provided that the Customer has been notified of the amended terms and does not object to the changes to the T&Cs within four weeks of receiving the notification of the change.

1.6. By entering company premises, visitors or deliverers accept the safety regulations found in the entrance area and the house rules which are available.

1.7. The Customer guarantees and confirms to Wiederkehr that any goods it sells or hands over to Wiederkehr have either been legally acquired, the Customer is the legal owner, or the goods are exclusively under its control. The Customer also confirms that goods do not originate from any criminal acts or VAT carousel fraud, and that the buyer is not directly or indirectly involved in such acts, even if there is only suspicion of such acts having been committed.

1.8. All of our offers are subject to change without notice and are not binding, with the exception of any deviating written agreements. Orders, offers, purchase orders and changes to orders, cancellations and any other agreements are only binding for us if these have been confirmed in writing by Wiederkehr. Silence does not constitute acceptance.

2. Offers, prices and payments

2.1. Wiederkehr's offers of sale are only valid if they have been made in writing. Verbal offers and subsequent amendments to contractual terms require written confirmation from Wiederkehr. Transmission by fax or email is equivalent to the written form. Verbal price agreements as part of ongoing contracts remain reserved.

2.2. Sales prices offered by Wiederkehr are exclusive of statutory VAT; transport costs, customs duties and other fees, and leasing costs for containers are only included in sales prices if this is explicitly mentioned or is based on Incoterms.

2.3. Wiederkehr is only bound to the purchase prices offered if the agreed delivery periods and dates have been met. If deliveries are late, Wiederkehr reserves the right to amend purchase prices in line with the price developments for the Material offered.

2.4. Wiederkehr invoices are due immediately on receipt without deduction. Deviating agreements must be made in writing. The Customer shall bear the payment method risk and any fees due with respect to the payment.

2.5. In the event of a default in payment, default interest in the amount of 5% above the base interest rate shall apply.

2.6. In the event of a default in payment, Wiederkehr is permitted to withhold any deliveries of Material without setting a grace period and dispose of such deliveries elsewhere. If contracts cover a number of deliveries of Material, Wiederkehr may terminate the same contract with the defaulting Customer without notice and without having any further obligations.

2.7. If a payment term has been agreed, the day of delivery shall be the effective date for calculations, which also applies to any interest calculations. Each order is considered to be a separate transaction for payment purposes.

2.8. Wiederkehr is entitled to offset payments against the Customer's oldest debts first, regardless of whether the Customer has deviating terms. If costs or interest have already been incurred, Wiederkehr is entitled to offset payments against costs first, then against interest and finally against the main good or service.

2.9. Payment shall only be deemed to have been made when Wiederkehr has the amount at its disposal. Cheques given to Wiederkehr by the Customer will only be accepted pending full payment. Payment shall only be deemed to have been made when the cheque has been cashed in without reservation and this has been finalised.

2.10. Payment by bill of exchange requires Wiederkehr's explicit prior consent. The buyer shall bear any exchange charges. The acceptance of bills of exchange does not mean that the underlying receivable is deferred.

2.11. Cash payments only have a discharging effect for Wiederkehr insofar as they are made to persons who have written authorisation to collect payment.

2.12. If the Customer does not meet its payment obligations, with particular reference to not honouring a cheque or suspending payments, a bill of exchange is protested or Wiederkehr is otherwise charged, thereby bringing the Customer's creditworthiness into question, Wiederkehr is entitled to demand payment of the outstanding debt, even if Wiederkehr has accepted cheques. In this case, Wiederkehr is also entitled to demand that an appropriate level of security is provided.

2.13. The Customer is only entitled to offsetting, withholding or reduction if the counterclaims have been established in a legally binding way or have been accepted in writing, even if a notice of defects has been submitted or counterclaims asserted.

3. Purchase and acceptance of Material

3.1. Should Wiederkehr suffer any disadvantage or damage of any kind as a result of an inaccurate declaration of delivered or accepted Material, the Customer is required to compensate for any resulting damage. The Customer guarantees that the Material delivered does not contain any hazardous materials, problematic substances or waste oils, is free from hollow bodies suspected of containing explosive material and does not exceed radioactive or other permitted (contamination) limits. If there is a level of radioactivity that is considered to be unacceptable by national and local authorities, the sender of such Material is obliged to dispose of it in accordance with legal regulations. Accordingly, the seller is required to indemnify Wiederkehr in the event of any third-party claims for compensation and any costs that have been incurred in this regard. If old reusable materials contained in the Material are not declared on delivery, Wiederkehr is also entitled to reject the delivery or refuse acceptance even after it has accepted the Material. If Wiederkehr carries out transportation to landfills or treatment plants, Wiederkehr is entitled to return the Material at any time if it subsequently transpires that the Material is unsuitable for the disposal/treatment provided for in the contract or if it has been wrongly declared. On return, the contract shall be deemed to be terminated and any costs, damages and disadvantages must be reimbursed by the Customer.

3.2. Ownership, use and risk for the Material delivered to Wiederkehr transfers to Wiederkehr on acceptance at its facilities. If deviating Incoterms have been agreed, the acceptance check will still be carried out at Wiederkehr's facilities.

3.3. Wiederkehr has the right to carry out a detailed check of the purchased Material and refuse acceptance or, optionally, assert a price reduction against the Customer in the event of defects and deviations from the contractually agreed quality, condition or quantity. In the event of concealed defects, these rights may also be asserted accordingly after acceptance. Costs for additional checks and expert opinions incurred as a result of defects or deviations in the contractually agreed quality, condition or quantity are to be borne by the seller.

3.4. The weight/quantity received and the quality determined by Wiederkehr shall be used as the basis of assessment for the Material purchased. Findings made at the facilities remain reserved in any case.

3.5. Agreed deadlines for delivery to Wiederkehr and/or deadlines for providing Material for collection by Wiederkehr are binding for Customers.

3.6. The Customer ensures that deliveries of Material are made with due care, and that Material delivered to Wiederkehr is in the contractually agreed condition and is free of unwanted substances and defects.

3.7. Wiederkehr is not liable for damage to transportation equipment used by Customers/suppliers such as towing vehicles and trailers.

4. Sale of Materials

4.1. Unless otherwise explicitly agreed, the sale of Materials takes place 'ex works' (from Wiederkehr's facilities) in accordance with Incoterms 2010®.

4.2. The delivery of Material to the Customer by Wiederkehr does not change the time at which benefit and risk transfers to the Customer upon provision for transportation 'ex works' from Wiederkehr's facilities. Written agreement of deviating Incoterms remains reserved.

4.3. Ownership of Material sold to the Customer by Wiederkehr shall not transfer until the purchase price has been paid in full. Wiederkehr reserves the right to enter retention of title in the register.

4.4. Obtained goods that have not been compensated for in full shall remain the property of Wiederkehr. The Customer shall store Wiederkehr's (co-)property free of charge. Goods to which Wiederkehr is owed (co-)ownership shall be referred to below as Reserved Goods.

4.5. The Customer is obliged to insure the Reserved Goods against natural disasters and theft at its own expense for the benefit of Wiederkehr.

4.6. In the event of a final return, Wiederkehr is entitled to deduct a fixed rate of 25% when issuing a credit note. Further compensation (e.g. transport costs and other activities) remain reserved.

4.7. Payment by bills of exchange or cheque is only accepted pending full payment; the agreed retention of title remains unaffected by this. In a cheque/bill of exchange transaction, retention of title continues to apply until the final bill of exchange has been honoured.

4.8. Wiederkehr must be immediately notified if Reserved Goods are pledged. This requires prior consent. The buyer must notify the third party of the retention of title in writing.

4.9. Extended retention of title: the buyer of Wiederkehr goods is entitled to use them in the ordinary course of business and to sell them on provided that it is not in default of payment. The Customer hereby assigns to Wiederkehr any receivables against a buyer from the onward sale of Reserved Goods. Wiederkehr accepts the assignment. The Customer is entitled to collect receivables for its own account and in its own name. If the Customer does not properly meet its payment obligations,

Wiederkehr reserves the right to collect the receivables itself. Processing and work on the delivered goods is always carried out in the name of and by order of Wiederkehr. If processing is carried out using items that do not belong to Wiederkehr, Wiederkehr shall acquire co-ownership of the newly created item in the ratio of the value of the delivered goods to the other processed items. The same applies if the Reserved Goods are mixed or combined with items that do not belong to Wiederkehr.

4.10. Expanded retention of title: goods delivered by Wiederkehr shall remain the property of Wiederkehr until all receivables Wiederkehr is entitled to from the Customer (now or in the future) have been fulfilled. Wiederkehr is obliged to release Reserved Goods at the Customer's request if the value of such goods exceeds the receivables to be secured by more than 10%. Wiederkehr shall select the Reserved Goods to be released.

4.11. Wiederkehr reserves the right to only deliver Material against advance payment and to cancel delivery and withhold Material if the Customer fulfilling its payment obligation appears uncertain.

4.12. Wiederkehr does not accept any liability for the Material sold being suitable for a purpose specified by the Customer.

4.13. Material sold by Wiederkehr is to be deemed to be free from defects unless Wiederkehr receives a written notice of defects from the Customer within three days of receipt or collection. If defects are asserted, the Customer is required to secure the Material concerned and Wiederkehr must be granted sufficient opportunity to assess the Material on-site.

4.14. Wiederkehr is entitled to withdraw from the contract if insolvency proceedings have been initiated over the Customer's assets or have been rejected due to a lack of assets required to cover costs and Wiederkehr has sold the Customer listed goods and raw materials, or seizure is pending for the Customer, or if the Customer breaches contractual obligations, without the Customer being owed claims for damages as a result of this. In the event of insolvency, Wiederkehr is entitled to reclaim goods that the Customer has not yet paid for and/or claim Material for offsetting purposes (see retention of title in Section 4.3 et seq.).

4.15. The Customer must report any defects in writing within one week. Wiederkehr has the right to rectify any defects, provide missing items or reduce the price. If the Customer does not meet its obligation to give notice of defects, any claims to warranty and compensation shall no longer be valid. Wiederkehr shall only be liable for wilful misconduct or gross negligence. Unless otherwise agreed on a case-by-case basis, Wiederkehr's obligation to pay compensation shall be limited to CHF 100,000, or the equivalent in euros. No minimum standards can be derived from the mere description of products. As an example, Wiederkehr does not guarantee any quality standards based on a product's name. The Customer is not permitted to offset its own receivables against Wiederkehr's receivables. This does not apply to consumers if Wiederkehr becomes insolvent.

4.16. If Wiederkehr experiences operational disruptions which prevent it from providing the contractual object within the agreed period of time and Wiederkehr is not responsible for this (e.g. if the disruptions are caused by force majeure, vandalism, etc.), delivery dates and deadlines shall be extended by the period of disruption and a set period required to return to service. Any claims for damages by the buyer that result from a delay in delivery shall only be compensated in the event of gross negligence in accordance with Section 6.

5. Provision of services

5.1. Transport, demolition and recycling services are provided by Wiederkehr with the due care required in accordance with legal provisions of the law of agency.

5.2. Wiederkehr may use third parties to provide services without the Customer's prior consent.

5.3. Items such as crates, skips, containers and other items are referred to as Leased Items which Wiederkehr provides to third parties.

5.4. Ownership: the Leased Item is and shall remain the property of Wiederkehr. The lessee/Customer is not permitted to remove signs attached to the Leased Item and is not permitted to sell, pledge, give away, lease or otherwise transfer the Leased Item to third parties. The lessee represents the interests of Wiederkehr with regard to third parties. The lessee is required to immediately notify Wiederkehr of any events that may affect Wiederkehr's ownership status or the Leased Item after delivery (handover).

5.5. Return: the lessee is obliged to return the Leased Item in the same orderly condition it arrived in, taking normal wear and tear into account. Any repairs or excessive end cleaning shall be charged to the lessee separately.

5.6. Damages: the lessee is liable to Wiederkehr for any loss or damage to the Leased Item between provision for acquisition and return, regardless of fault or cause, including in the event of force majeure. Wiederkehr shall repair any Leased Item that is not returned in an orderly condition without undue delay and at the lessee's expense.

5.7. Insurance: the Leased Item is not insured by Wiederkehr.

5.8. Handover: the lessee shall check the condition and suitability of the Leased Item upon handover. The Leased Item is leased out in the condition it is currently in. Any claims resulting from the fact that the Leased Item is not in the condition required by the lessee or does not correspond to intended use shall be excluded, provided that there were no complaints at the time of handover. The lessee is obliged to provide a suitable location and a hard-surfaced access road for the Leased Item.

5.9. Permits: the lessee must obtain any official permits required for the installation, construction and/or use of the Leased Item.

5.10. Moving the Leased Item: the lessee or third parties are not authorised to move, transfer, load or unload or otherwise use the Leased Item for any purpose other than the purpose it was provided for.

5.11. Liability: Wiederkehr is not liable for any direct or indirect damage incurred by the lessee or third parties because of the Leased Item or as a result of using the Leased Item, regardless of the type of damage. The lessee is obliged to indemnify and hold Wiederkehr harmless from and against any claims from third parties. Wiederkehr is also not liable if the Leased Item is moved, transferred, loaded or unloaded or otherwise used for any purpose other than the purpose it was provided for with or without consent or oversight from a Wiederkehr employee.

5.12. Charges: any charges and fees, as well as taxes, customs duties and levies incurred as a result of the lease agreement, or holding or using the Leased Item, shall be borne by the lessee.

5.13. Special waste law provisions for cross-border traffic: the contractual partner/Customer is responsible for and must ensure that the waste producer or the access point/loading point issues all of the papers required in accordance with the latest version of Annex VII of the EC Regulation (EC) No. 1013/2006 on shipments of waste, that these are submitted before transportation begins and that they have been completed in full and are carried on each journey. The contracting party shall indemnify and hold Wiederkehr harmless in this regard.

6. Liability

6.1. The Customer is liable to Wiederkehr for any damage suffered as a result of a breach of contract for which the Customer is responsible. The Customer shall indemnify Wiederkehr against all third-party claims insofar as these are caused by a breach of contract for which the Customer is responsible.

6.2. In the event of delays or inadequate performance in cases of force majeure, the parties shall not be at fault. 'Force majeure' refers to external, unforeseeable circumstances that cause damage where the impact of such circumstances cannot be prevented by normal means.

7. Applicable law and place of jurisdiction

7.1. Place of jurisdiction and applicable law for Wiederkehr companies domiciled in Switzerland: contracts between Swiss Wiederkehr companies and the Customer, as well as any resulting disputes, are exclusively subject to the law of the Swiss Confederation. The applicability of the Convention relating to a Uniform Law on the International Sale of Goods is excluded. The place of performance and the place of jurisdiction for any disputes that arise either directly or indirectly from the contractual relationship is the respective registered office of the company in accordance with Section 1.1.

7.2. Place of jurisdiction and applicable law for Wiederkehr companies domiciled in Germany: contracts between German Wiederkehr companies and the Customer, as well as any resulting disputes, are exclusively subject to the law of the Federal Republic of Germany. The applicability of the Convention relating to a Uniform Law on the International Sale of Goods is excluded. The place of performance and the place of jurisdiction for any disputes that arise either directly or indirectly from the contractual relationship is the respective registered office of the company in accordance with Section 1.1.

7.3. UN Convention on Contracts for the International Sale of Goods: the exclusive jurisdiction of the relevant courts and applicable law for making decisions on any disputes arising from a contract – including those concerning its existence or non-existence as well as its pre-contractual effects and post-contractual effects – shall be agreed as the registered office of the respective company, **to the exclusion of the rules of the UN Convention on Contracts for the International Sale of Goods and all conflict-of-law rules.**

8. Final provisions

8.1. Other terms of delivery only apply if they are in line with Wiederkehr's terms above. Wiederkehr's terms are decisive with respect to wording and interpretation in cases of doubt.

8.2. Failure to confirm the terms above is equivalent to acceptance.

8.3. The Customer is not permitted to transfer rights and obligations from contracts with Wiederkehr to third parties without Wiederkehr's consent.

8.4. Data required for order processing is stored as part of electronic billing. The data will be treated as confidential by Wiederkehr in compliance with any legal requirements and only shared with external parties for monetary or payment transactions if required.

8.5. Should these T&Cs, parts thereof or other provisions of the contract be invalid or become invalid due to more recent case law, either in whole or in part, the validity of the remaining provisions shall remain unaffected by this. Invalid regulations must be replaced by regulations that come as close as possible to the prior economic purpose and are legally valid based on the current legal position.

Valid from 22 February 2019