

General Terms and Conditions of Purchase of IMR Innovative Metal Recycling GmbH, Hentrichstrasse 68, D- 47809 Krefeld (as of March 1, 2013)

§ 1 Scope of validity/Area of application/Defence clause

1. Our conditions shall apply vis-à-vis any natural person and legal entity or partnerships having legal capacity which acts – upon conclusion of the contract with Innovative Metal Recycling GmbH (“IMR”) – in the exercise of its commercial or independent professional activity (enterprise within the meaning of Section (§) 14 Civil Code (BGB)) as well as vis-à-vis legal entities under public law or a public law special fund. These General Terms and Conditions of Purchase shall not be applied vis-à-vis consumers within the meaning of Section (§) 13 Civil Code.
2. These Terms and Conditions shall apply exclusively for all our orders – also future ones (including purchase confirmations). Deviating or additional terms and conditions by the supplier/seller or third parties assigned by it shall be non-binding for us even if we do not oppose them in the individual case, unless we accept them in writing. In that case, they shall only be valid for the respective individual contract. The unconditional acceptance of goods, services or payments does not mean any acknowledgement of deviating terms and conditions from the supplier/seller. Special agreements concluded between us and the supplier/seller shall remain unaffected thereby.
3. Explicitly contradicted shall be the validity of possible AGBs (general business terms and conditions) of the supplier and/or the seller or third parties assigned by the already named. This shall also apply if IMR – being aware of deviating AGBs of the supplier/seller – unconditionally accepts performances/services by the supplier/seller.
4. Supplementary to these Terms and Conditions, INCOTERMS shall apply in their respectively valid version.

§ 2 Contract conclusion

1. Incoming offers shall be free of charge and non-binding for us.
2. The written form shall be required for our orders, supplements and changes to an order.
3. We shall not be bound to our order if we do not receive a written order confirmation within 10 days as of the date of order.
4. All orders, arrangements, promises, oral agreements, secondary agreements, contract amendments/supplements shall require our written confirmation.
5. The contracting partner may only rely on the legal validity of agreements upon written confirmation by an authorized representative who is entered in the Commercial Register, if such agreements had been concluded with an employee of our company without any right of representation entered in the Commercial Register. Thus, agreements with such employees of our company shall always be subject to approval. This shall also apply in cases in which such employee repeatedly enters into agreements. Our contracting partner thus cannot rely on the existence of an ostensible authority or power of representation by estoppel.

§ 3 Delivery item/Dispatch

1. Our order shall be decisive for the content, type and scope of the delivery.
2. The values which we ascertained at the incoming goods inspection shall be decisive for weights, dimensions and quantities.
3. Partial deliveries shall not present any performance, unless we approve them.
4. We reserve the right to return excess deliveries at the expense of the supplier.
5. Dispatch shall be effected at the risk and costs of the supplier/seller. This shall also apply for any possible return shipments. The supplier/seller shall be liable for compliance with the specified dispatch provisions.
6. Risk shall pass to us upon transfer of the delivery at the place of performance (see Section (§) 4 No. 7).
7. If, upon our arrangement, the delivery is directly sent to third parties, we shall be immediately notified thereof by means of a dispatch note with all relevant information.
8. Delivery items shall be properly packaged and dispatched. Packaging and dispatch regulations shall be complied with. A delivery note or packing slip shall be included with every delivery. Order number and the designations requested in our order shall be specified in all delivery documents. A dispatch note shall be sent to us at the latest on the day of dispatch. If extra costs are incurred due to non-compliance with the aforementioned requirements, the supplier/seller shall bear these costs.
9. Prior to the delivery, it shall be absolutely required that the supplier/seller carefully examine delivery items containing old material (e.g. iron scrap, non-ferrous metal) for explosion material and for hollow bodies suspected of containing explosive material.

Delivery items shall be free of all components which are detrimental for smelting or metallurgical processes, and they shall also be free from materials with a high fire hazard and also free from radioactive material, foreign contaminations and, respectively, entrained substances or foreign bodies.

10. Upon delivery of scrap, the supplier/seller shall sign our respectively valid “Certificate stating freedom from explosive devices and Statement regarding ionizing radiation for scrap deliveries” in which supplier/seller affirms, inter alia, to have examined the scrap and confirms that the scrap does not contain either explosive device, or items suspected of containing explosive material or closed hollow bodies.
11. All dispatch papers shall specify the precise designation of the grade, the supplier’s address, contract number, delivery weight and the exact receiving point. If no grade is indicated, our classification shall apply.

§ 4 Delivery period/Place of performance

1. The agreed upon delivery date shall be binding. Decisive shall be the Point in time of the delivery with us or at the specific place of destination. Advance deliveries shall only be permitted with our consent.
2. As soon as delays become apparent at the supplier’s/seller’s place, he shall advise us immediately thereof, with an indication of the reasons and the expected duration of exceeding the date.
3. If agreed upon dates are not complied with – due to circumstances for which the supplier/seller is responsible, we shall be entitled – after unsuccessful expiration of a grace period set by us – to withdraw from the contract irrespective of further statutory claims and procure spare parts from a third party/side, at the cost of the corresponding contract partner and/or demand damages due to non-performance.
4. The supplier/seller shall replace all extra costs incurred due to delayed deliveries and services.
5. Acceptance of the delayed delivery or service shall not include any waiver of compensation claims.
6. **Labor** disputes, breakdowns and all other incidents of force majeure release us for the duration of the disorders from the obligation of acceptance. In such cases, we may annul the contract wholly or in parts or demand execution at a later point in time. The supplier/seller shall not have any claims against us due to the annulment or postponement if we had not brought about the disorder deliberately or in gross negligence.
7. Place of performance for deliveries or services by the supplier/seller shall be the dispatch address indicated in our order. If no dispatch address is indicated, the place of performance shall be our registered office.

§ 5 Prices

1. The price shown in the order shall be binding. In the absence of any written agreement to the contrary, the price shall include deliveries “free domicile” including packaging. Any return of the packaging shall require a special agreement.
2. Decisive for billing shall be the weights ascertained on the part of IMR at the place of performance by full and empty weighing, as well as the works findings ascertained.

§ 6 Terms of payment

1. Unless otherwise agreed upon, the invoice shall be paid within 30 days after receipt of a proper invoice with 3 % cash discount provided that nothing to the contrary has been agreed. Discount deduction shall also be allowed in case of offsetting or retention due to deficiencies of the delivery.
2. The supplier/seller may not assign any claims against us; Section (§) 354a Commercial Code (HGB) shall remain unaffected.
3. We shall be entitled to offset with all claims to which we are entitled against the supplier/seller.

§ 7 Warranty

The supplier/seller shall ensure that the delivered goods are in compliance with the statutory and administrative provisions applicable for its distribution/sale and its utilization, and that the goods do not violate third-party rights.

§ 8 Defects

1. We are obligated to examine the goods within a reasonable period of time for possible quality and quantity deviations – the examination comprises an optical inspection and a weight check; random samples are here sufficient.
2. IMR shall lodge a complaint regarding quantity differences immediately after the goods received at the place of destination.
3. In case of shortfalls with regard to non-ferrous metals and alloyed scrap, we are entitled to up to 200 kg defect claims – even without any explicit complaint.

4. Notices of defects regarding moisture and oil shall be lodged within 3 workdays after the goods received at the place of destination, and other quality complaints within eight workdays after the goods received at the place of destination.
5. For goods which must be **analyzed** or evaluated, the complaint period shall be extended to fifteen workdays after the goods received at the place of destination.
6. For hidden defects, complaints shall be lodged immediately after their detection.
7. In case of defects of the delivery item as well as of the agreed upon performance, we shall be entitled to lodge the statutory claims. If the supplier/seller refuses, without justification, to remedy the defects or if he is in arrears with the remedy of defects and if rather considerable damage is threatening for us or our customers due to the defect, we shall be entitled to perform the remedy of defects on our own or have it done by third parties at the supplier's/seller's cost.
8. Even if no special quality is agreed upon, radioactive or otherwise contaminated scrap shall be considered inadequate or defective if the permitted tolerance limits of national or local authorities are exceeded. The supplier/seller shall release us from damage claims by third parties and from all costs incurred in this connection.

§ 9 Information and due diligence obligation

1. If we informed the supplier/seller about the intended purpose of the delivery or service or if this intended purpose is apparent for the supplier/seller even without any explicit information, the supplier shall be obligated to inform us immediately if the delivery or service is unsuitable to fulfill this intended purpose.
2. For the clarification of further procedures, we shall be immediately notified in writing about circumstances which jeopardize compliance with agreed upon delivery dates.
3. The supplier/seller shall notify us immediately in writing about changes in the type of composition of the processed material or in the structural design versus similar deliveries or services as had been rendered until then. The changes shall require our written consent.
4. The supplier/seller shall take care that the deliveries and services meet the environmental protection regulations, accident prevention and other occupational safety regulations, safety-related rules, as well as all legal requirements valid in the Federal Republic of Germany. With every delivery, the supplier/seller shall advise us of specific, not generally known treatment and disposal requirements.
5. The IMR safety regulations shall be complied with when accessing and driving within our company grounds. In particular, after having left their truck, truck drivers shall wear helmets and work shoes within the IMR company grounds.

§ 10 Provision

1. Any type of objects provided by us shall remain our property. They may be exclusively used for rendering the ordered deliveries and services.
2. The supplier/seller shall be obligated to carry out, at its own costs, any possibly required maintenance and inspection work, and to adequately ensure the provided objects and provide us, upon request, with documentary evidence about the insurance.
3. If objects provided by us are processed or modified by the supplier to a new, movable item, we shall be considered the manufacturer. In case of a connection or inseparable mixing with other objects, we shall acquire co-ownership in the new matter in relation of the value of the provided objects at the point in time of the connection or mixture. If the connection or mixing is done such that the manufactured object by the supplier is to be considered as the main matter, the supplier shall transfer co-ownership to us on a pro-rated basis at the ratio of the value of the provided objects; the supplier shall safeguard the co-ownership for us.

§ 11 Secrecy

1. The supplier/seller agrees to keep secret the commercial and technical information and documents which are not generally known but known to him due to the business relationship and supplier/seller agrees to use them exclusively for rendering the ordered delivery and service.
2. For the submission of references or publications, the supplier/seller may only name our company or our brands if we had agreed to it in writing beforehand.

§ 12 Reservation of ownership

1. Upon payment, ownership in the delivery shall pass to us.
2. We acknowledge only the simple and the extended reservation of ownership.
3. We reject the agreement of an expanded reservation of ownership.

§ 12 Liability of buyer

1. Liability by IMR shall be principally limited to damages which the company itself or its vicarious agents brought about deliberately or in gross negligence.
2. With regard to slight negligence, IMR shall only be liable in case of injury to life, body or health, as well as the violation of obligations which are essential for fulfilling the contractual purpose.
3. As far as the supplier/seller is responsible for product damage, he shall be obligated to release us insofar from damage claims by third parties upon first request as the root cause is set in his controlling and organizational area and he is liable himself in the external relationship.

§ 13 Prohibition of assignment

The supplier/seller shall not be entitled to assign, to third parties, his claims against us without our written consent; consent may only be denied for cause.

§ 14 Applicable law/Place of performance/Final provisions

1. For the business terms and conditions and the entire legal relationships between IMR and the supplier/seller, the laws of the Federal Republic of Germany shall apply, to the exclusion of the U.N. Convention on the International Sale of Goods (CISG).
2. In commercial business transactions, our registered office is agreed upon as the place of jurisdiction, also in cases in which the supplier has no general domestic place of jurisdiction, had moved abroad his residence or habitual abode after contract conclusion, or at the time of filing the legal action, neither domicile nor habitual abode of the supplier are known. We are entitled to also bring action at the supplier's registered office.
3. Should any of these provisions be or become invalid, the validity of the remaining provisions shall not be affected thereby.