

Sales and Delivery Terms of Veolia Umweltservice PET Recycling GmbH for used PET bottles (2011)

1. Scope of these terms and conditions

1.1 These Sales and Delivery Terms shall apply exclusively to the entire business relationship, in particular the delivery of PET bottles, between Veolia Umweltservice PET Recycling GmbH (hereinafter Seller) and the Buyer. Terms of Purchase or other business terms and conditions of the buyer are hereby objected to. They shall not be applied. The seller is entitled to change its Sales and Delivery Terms effective for the future entire business relationship with the buyer after a corresponding notification. The change shall be deemed as approved if the buyer has not sent its written objection within six weeks after announcement of the change. The seller shall particularly point out this consequence to the buyer with the announcement.

1.2 Should one of the provisions of these Sales and Delivery Terms be or become invalid this shall have no effect on the validity of the contract on the whole. The parties shall replace the provision by a clause which shall correspond with the sense and purpose of the clause to a large extent. In no way shall the provision concerned in these Sales and Delivery Terms be replaced by business terms of the buyer. The same shall apply in case of a loophole in the Sales and Delivery Terms.

2. Conclusion of the contract, written form

2.1 Offers of the seller are without obligation and non-binding until the executed conclusion of the contract.

2.2 Orders of the buyer are binding for said buyer. Insofar as not confirmed in writing otherwise by the seller the invoice shall be deemed as confirmation of order.

2.3 If the buyer is entrepreneur exclusively the written confirmation of the seller is decisive for the contents of orders and agreements provided that the buyer does not object immediately in writing. This shall in particular apply to oral orders and agreements or orders and agreements by telephone. A notification to the seller is in any case not deemed as immediate if it has not been received by the seller within seven days.

2.4 Possible amendments or addendums to the contract with the assistance of employees of the seller require the consent of personnel of the seller who are authorised to representation in order to be valid. In the event of dispute the buyer has to prove the granting of the consent by the personnel who are entitled to representation.

3. Delivery date, delivery

3.1 Delivery dates and deadlines are approx. dates. Delivery dates shall be deemed as adhered too with the report that the goods are ready for shipment.

3.2 The seller is entitled to partial deliveries after coordination with the buyer.

3.3 The buyer has to examine and confirm receipt of the delivery note. Possible objections are to be reported to the seller immediately in writing. Otherwise the confirmed delivery quantity shall be deemed as recognised.

3.4 Delays in delivery by interruptions to operation, official measures or force majeure shall lead to a reasonable extension of the delivery deadlines after coordination with the buyer. Force majeure shall also exist in case of industrial dispute measures including strikes and lawful lockouts in the seller's plant or at the sub-suppliers of the seller. Claims of the buyer for damages are excluded in this case within the limits of Subclause 10 (liability).

3.5 If the buyer suffers a damage by a delay in delivery caused by the seller, the buyer can request indemnification for this damage in the maximum amount of 5% of the value of the part of the whole delivery which is affected. This limitation to liability shall not apply insofar as the delay in delivery is a result of wilful intent or gross negligence of the seller or life, the body or health are injured by the delay in delivery for which the seller is responsible. In the event of a delay in delivery the buyer can cancel the contract after setting a reasonable final deadline if the service is not carried out within the final deadline. Further claims in case of delay in delivery, in particular claims for damages, are excluded according to the regulations in Subclause 10 (Liability).

4. Shipment and passing of risk

4.1 The delivery is carried out ex works. The seller shall arrange for the shipment to the buyer in its name and at its costs and risk. This shall also apply if the seller bears the costs of the transport and/or insures it owing to individual agreements.

4.2 The seller shall take out transport insurance at the request of the buyer and at its costs. The seller is entitled to name itself as beneficiary. When selecting the transport insurer it shall only be liable for the own customary care and attention.

4.3 Objects of delivery which are reported ready for shipment must be called immediately upon achievement of the delivery date. If the shipment is delayed as a consequence of circumstances, for which the Buyer is responsible, it shall be deemed in default on the day upon which the goods are reported ready for shipment. § 294 BGB [Civil Code] according to which the service must actually be offered to the creditor (buyer) as it is to be effected, is excluded. The risk shall thus pass to the buyer on the day of the report. In this case the seller shall store the goods at the risk and costs of the buyer.

4.4 Each increase in the freight costs through a subsequent change to the type of conveyance, the transport route, the place of destination or similar circumstances which have an effect on the freight costs shall be for the account of the buyer.

4.5 Obvious losses or damages during the transport are to be noted by the buyer on the freight receipt with a corresponding reservation. In addition, they are to be reported towards the carrier immediately in writing. All steps which are necessary for safeguarding the rights of the customer are to be initiated by the buyer immediately. Losses or damages by the transport are to be reported to the seller immediately. An exclusion deadline of one week shall apply to the report towards the seller.

4.6 Damages or losses by the transport shall not release the buyer from the full payment of the purchase price to the seller. Possible services of the transport insurance according to Subclause 4.2 shall exclusively be carried out as conditional payment.

5. Prices and change in price

5.1 The prices shall apply ex works plus the value added tax which is respectively applicable upon conclusion of the contract. Decisive is the price stated in the order confirmation.

5.2 The seller can additionally charge packaging costs to the buyer at the cost price. Disposal costs for packaging material, which are incurred for the account of the seller according to the corresponding statutory provisions, will be invoiced to the buyer and paid hereby.

5.3 In the statutory value added tax rate is increased between conclusion of the contract and actual delivery the agreed gross purchase shall be increased accordingly.

5.4 The seller is entitled to adjust the purchase price subsequently by a reasonable amount if the cost factors for the goods do not substantially (more than 5 %) increase between conclusion of the contract and time of delivery. The increased amount of the price adjustment may not exceed the scope of the increase in costs. If such a price adjustment leads to a substantial increase in prices the buyer is entitled to cancel the contract if it as proven can procure the goods otherwise at a substantially lower price and incidentally at the same conditions and despite corresponding proof the seller is not willing to satisfy the contract at this other price.

5.5 In case of sales on call order the seller is bound to the confirmed price for a period of three months from the order confirmation date. In case the goods are called after expiry of the deadline the seller is entitled to charge the prices which are applicable at the time of the call order.

6. Terms of payment, offsetting and right of retention

6.1 The payment is to be made free of charge for the seller immediately net cash in the absence of a special agreement.

6.2 The receipt on the bank account of the seller is decisive for the satisfaction, the punctuality of the payment and the occurrence of possibly agreed cash discounts.

6.3 Even if a term of payment was agreed the seller can request the immediate payment of all claims and/or render deliveries dependent on advance payments if a deterioration in the income or asset circumstances of the buyer has occurred which is relevant for the payment of the claim or such is expected owing to objective circumstances for the future. In the event of a deferral or agreement of instalment payments all claims against the buyer shall be deemed due and payable immediately if the buyer finally refuses a payment or is in default with a due payment by more than 14 days. This shall not apply if the amount in arrears accounts for less than 10 % of the outstanding claims.

6.4 An offsetting of the buyer against counter-claims as well as the assertion of rights of retention is excluded unless it concerns undisputed claims of the buyer or claims which have been declared final and binding. This shall also apply with the assertion of defects.

6.5 In case of default of the buyer the seller can request the interest yield of the outstanding amount of 10 percentage points above the respective base lending rate as well as costs per reminder of € 3.00 subject to further claims. The buyer is entitled to provide proof that the seller has been incurred a cost share of less than € 3.00 per reminder.

7. Obligation of the buyer to the proper resale/ exploitation/ processing – proof of substance flow

7.1 The buyer assures that it has a certification as recycling company for plastic packaging which is recognised in the Federal Republic of Germany.

7.2 The buyer assures that it knows the statutory stipulations in the Federal Republic of Germany for the resale, exploitation and processing of plastic packaging. The buyer shall comply with the statutory stipulations with the resale/processing/exploitation of the goods delivered by the seller.

7.3 Should the seller have to provide a so-called "proof of substance flow" for the goods sold by it according to the packaging regulations or have to assist in a proof of substance flow for its suppliers then the buyer shall make the proof/declarations, which are necessary for a proper proof of substance flow available to the seller for its resale/exploitation/processing. The buyer shall ensure that the creation of a proof of substance flow which conforms with the law is not endangered through its acts.

7.4 If the buyer culpably breaches its afore-mentioned obligations in this Subclause 7., then it shall pay a conventional penalty of € 10,000.00 to the seller for each breach. This conventional penalty shall not be offset against damages which are suffered by the seller. The seller reserves the right to assert further damages.

8. Quality and defects of quality

8.1 The goods are sold under the exclusion of all liability for defects of quality of the seller. This exclusion shall not apply if the seller maliciously failed to disclose defects, with wilful or grossly negligent breaches of duty of the seller, the assumption of a guarantee of condition by the seller as well as in the cases of the injury to life, the body or the health.

8.2 Incidentally, Subclause 10 (Liability) shall apply to claims for damages. Further claims of the buyer, or other claims than those regulated in this Subclause 8., against the seller owing to a defect of quality are excluded.

9. Reservation of title

9.1 The delivered goods (reserved goods) shall remain the property of the seller until the payment of the purchase price. The goods shall in addition remain the property of the seller until the payment of all claims of the seller from the business relationship with the buyer existing at the time of the respective conclusion of the contract.

9.2 The processing or conversion within the meaning of § 950 BGB (hereinafter as a standard "processing") of the reserved goods shall be carried out free of charge for the seller, i.e. from a legal point of view the seller is the manufacturer of the new objects so that an acquisition of ownership by the buyer does not take place as opposed to the regulation of § 950 BGB.

9.3 In the event of the processing of reserved goods and objects of other owners by the buyer or its sub-contractors it is carried out at the same time – free of charge – for the seller and the buyer. In case the buyer has reached agreements in this respect with the owners of other objects involved in the processing it is also carried out for these other owners. The processing is carried out under the condition that the seller, the buyer and if applicable the other owners are to be seen as joint manufacturers of the individual new objects at all times and at every level of the processing.

- The seller acquires co-ownership to the individually produced objects in the ratio of the pro rata invoice value for the respectively processed reserved goods to the total value of all processed objects. The same shall apply to the events of the connection and mixing or combination within the meaning of §§ 947 and 948 BGB. In all of the afore-mentioned cases the buyer respectively acquires a corresponding expectant right to the produced or established standard objects which as the expectant right to the reserved goods will be reinforced to a full right. The objects produced from the processing as well as those assigned to the seller in full or in part shall be deemed as reserved goods within the meaning of these terms and conditions.
- 9.4 Pledges or assignments as collateral of the reserved goods to third parties and the assignment or pledge of expectant rights in this respect are excluded. In case of attachments and seizure by third parties including the assertion of rights of lien as well as landlord rights of lien and with other impairments to the collateral rights of the seller the seller is to be notified immediately. The costs of an intervention by the seller shall, insofar as they cannot be obtained from the respective third party, be for the account of the buyer.
- 9.5 In case of default of payment the reserved goods are to be handed over to the seller immediately upon request without this requiring a declaration of cancellation of the seller. The same shall apply with a substantial deterioration to the financial position of the buyer. The request to take the goods back and the taking back of the goods shall not be deemed as cancellation of the contract.
- 9.6 If the buyer acquires the reserved goods for the purpose of the direct resale the buyer is entitled to sell these in the proper course of business. If it acquires these for the purpose of connection or the processing and the subsequent resale it is entitled to sell the object of processing in the proper course of business. This shall not apply if the incurred claim is covered by previous disposals of the buyer for the benefit of third parties, for example by a global assignment.
- The buyer hereby now already assigns the claims incurred from the sale of the reserved goods to the seller with effect as of the time at which they are incurred in the full amount with all secondary and collateral rights. The seller hereby accepts the assignments.
- If reserved goods are sold together with other goods the assignment is carried out in the amount, which the seller invoiced the buyer pro rata for the reserved goods concerned. In the event that the seller is only entitled to a co-ownership share to the reserved goods the assignment shall be carried out in the amount, which corresponds with the value invoiced by the seller to the buyer of the reserved goods delivered by the seller and contained therein, which established the co-ownership share. All assignments are respectively carried out in the first rank for the seller.
- If the buyer includes the claims from a resale of reserved goods into a current account relationship existing with its end buyers then the respective recognised balance claims and the final balance claim are insofar assigned to the seller to the extent that individual (partial) claims are contained in said claim, which would have been assigned according to the afore-mentioned provisions if it had not concerned claims which were to be transferred to the current account.
- Any assignment, pledge otherwise or other encumbrance of these claims or claim parts is not permitted.
- 9.7 The buyer can, as long as he satisfies his payment obligations towards the seller, collect the claims for itself in the proper course of business. The assignment of the claim is excluded. This shall not apply in the event of the assignment for the purpose of the collection of the claim by way of the factoring if at the same time the obligation of the factor is established to effect the consideration in the amount of the claim share of the seller directly to the seller as long as claims still exist for the seller against the buyer.
- 9.8 With the default of payment of the buyer by more than one month, the suspension of payments of the buyer, an executed attachment of reserved goods or the application for the opening of insolvency proceedings over the buyer's assets the right of the buyer to processing or connection/mixing shall lapse as well as the right to resale of the reserved goods and also the right to collection of the claims.
- The seller is to be informed immediately of the impending events. It is to be sent a list of existing reserved goods. The reserved goods are to be stored separately and to be handed over to it immediately at its request. The seller is in addition immediately entitled to collect the claims assigned to it. The assigned claims are to be announced to the seller immediately with their composition, amount, date of establishment as well as with the first and last names and addresses of the third party debtors.
- The third party debtors are to be informed about the executed assignment by the buyer immediately. The buyer has to issue the seller an assignment deed upon request. The monies received on the claims assigned to the seller after the lapse of the claim collection right are to be accepted in trust up to the amount of all secured claims and to be paid out to the seller immediately or to be collected on a separate account with the designation "Money kept in trust on behalf of Veolia Umweltservice PET Recycling GmbH". The buyer agrees with the seller that the accepted money is the property of the seller. The buyer hereby now already assigns the claims from the mentioned account to the seller. The seller accepts this assignment.
- 9.9 After taking the goods back according to Subclause 9.5 or cancellation of the contract the seller is entitled to freely sell goods which have been taken back. The sales proceeds will be credited to the buyer. To be deducted from the sales proceeds are reasonable collection, processing and sales costs. The salaries of the employees of the seller used for this work are also to be estimated pro rata. To be estimated as sales costs are 25 % of the sales proceeds. However, credited will be as a maximum the amount which a company of the trading level of the seller would usually pay as purchase price for the reserved goods which were taken back by taking into consideration their condition when they were taken back and their location.
- 9.10 The buyer undertakes to sufficiently insure the reserved goods at its own costs to the customary extent, in any case however against fire, storm, water and theft damages and to prove the insurance cover towards the seller upon request. The buyer hereby assigns its claims, to which it is entitled against the insurance company and/or other third parties in connection with the reserved goods, in the amount of the share which relate to the reserved goods of the seller, to the seller. The seller hereby already accepts the assignment.
- 9.11 Insofar as the secured claims of the seller are not just temporarily secured by reserved goods and/or assignments or other collateral with more than 110% the seller shall release collateral rights at its own choice at the buyer's request up to the afore-mentioned limit. The proceeds which can be realised when selling the collateral are to be assumed with the valuation of the collateral items. In no way however is a higher value to be assumed than the value, which is to be credited to the buyer according to the afore-mentioned regulations in the event that goods are taken back or in the event of the collection of the claim by the seller.
- 10. Liability**
- 10.1 The following exclusions and restrictions to liability shall also apply to claims in tort insofar as these compete with contractual claims.
- 10.2 The liability of the seller for damages no matter of what kind is excluded. This exclusion shall not apply
- to damages, caused by the seller by wilful intent or gross negligence;
 - in cases of slight negligence to damages, which are due to an injury to life, body or health as well as – subject to the regulations under Subclause 2. and Subclause 3. – to damages which are due to a breach of essential contractual duties by the seller.
- 10.3 The seller shall be liable per damaging event, which is caused by gross negligence of vicarious agents, who are not legal representatives or executives, a maximum up to the sum insured of the employer's liability insurance (€ 10,225,838.00).
- 10.4 In the cases of negligent breach of essential contractual duties the liability of the seller – with the exception of injuries to life, body or the health – is limited to the typical damages for the contract which were foreseeable for the seller upon conclusion of the contract or commitment of the breach of duty. The maximum limit to the liability is the amount of the sum insured of the employer's liability insurance of the seller (€ 10,225,838.00).
- 10.5 The afore-mentioned exclusions and restrictions to liability shall also apply to the liability of the seller for its bodies, employees and vicarious agents as well as the personal liability of the bodies, employees and vicarious agents of the seller.
- 10.6 The afore-mentioned exclusions and restrictions to liability shall not apply to claims according to the Product Liability Act insofar as liability is mandatory according to this law. Neither shall they apply if the seller submitted a guarantee of condition or durability.
- 11. Place of performance, place of jurisdiction, applicable law**
- 11.1 The place of performance for the payment and the delivery of goods is Hamburg.
- 11.2 Hamburg is agreed as exclusive place of jurisdiction with buyers, who are merchants, legal entities under public law or special assets under public law. The seller is however at liberty to also file action against the buyer at its registered seat.
- 11.3 Exclusively German substantive law shall apply under the exclusion of the international private law, the standardised international law and in particular under the exclusion of the UN Convention on the International Sale of Goods (CISG).
- 12. Non-disclosure obligation**
- The buyer undertakes to keep information about the technical and commercial know-how of the seller, of which it becomes aware within the framework of the business relationships, strictly secret and only to use this for the purposes envisaged as per contract. This obligation shall apply for the duration of the business relationship. It shall apply beyond this for a period of two years after its termination. It shall not refer to publicly known knowledge, which has become known without the breach of this non-disclosure obligation. If the buyer culpably breaches the obligation for non-disclosure then it has to pay the seller a conventional penalty of € 5,000.00 for each breach.
- 13. Data protection**
- 13.1 The seller is entitled to process and to store the data about the buyer received in connection with the business relationship – even if these stem from third parties – within the meaning of the Federal Data Protection Act and to have these processed and stored by third parties commissioned by the seller.
- 13.2 For the purpose of the decision about the establishment, execution and termination of the contractual relationship or before the delivery against an invoice the seller shall assess the risk of loss of payment if applicable based on the credit agency data by including a credit scoring. To this end VUS shall call creditworthiness information based on mathematical-statistical processes by using address data.