

## Terms of Sale and Delivery of Veolia Umweltservice PET Recycling GmbH (Status: May 2011)

### 1. Scope of these terms and conditions

- 1.1 These Terms of Sale and Delivery shall apply exclusively to the whole business relationship between the seller and the buyer. The Terms of Purchase or other business terms of the buyer are hereby if applicable objected to. They shall not apply. The seller is entitled to change its Terms of Sale and Delivery effective for the entire future 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. Should one of the provisions of these Terms of Sale and Delivery be or become invalid this shall have no effect on the validity of the contract on the whole. The statutory regulation shall apply in its place. In no way will the provision concerned in these Terms of Sale and Delivery be replaced by business terms of the buyer. The same shall apply in case of a loophole in the Terms of Sale and Delivery.
- 1.2 If a framework agreement exists between the buyer and the seller these Terms of Sale and Delivery shall apply both to this framework agreement as well as to the individual order.

### 2. Conclusion of contract, written form

- 2.1 Offers of the seller shall be without obligation and non-binding until the actual conclusion of the contract.
- 2.2 Orders of the buyer are binding for it. Insofar as no written confirmation is carried out otherwise by the seller the invoice shall be deemed as an order confirmation.
- 2.3 If the buyer is an entrepreneur the written confirmation of the seller shall be exclusively decisive for the contents of orders and agreements insofar as the buyer does not immediately object in writing. This shall apply in particular to oral orders and agreements or orders and agreements by telephone. A notification to the seller is in any case not deemed 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 for their validity the consent of personnel of the seller who have authorization for representation. In the event of a dispute the buyer has to prove the granting of the consent by the personnel who have authorization for representation.
- 2.5 Terminations, declarations of cancellation, request for reduction of the purchase price or damages require a written form.

### 3. Contractual escape clause

Should one or several provisions of the contract concluded between the seller and the buyer be or become invalid this shall have no effect on the validity of the other provisions of the contract. The invalid provision shall be replaced with retrospective effect by that valid provision which shall as far as possible correspond with the purpose intended by the parties upon conclusion of the contract. The same shall apply in case of a loophole in the respective contract. The legal consequences of the breach of the statutory regulations for General Business Terms shall apply irrespective of the regulation in Sentence 1.

### 4. Delivery date, delivery

- 4.1 If details of the order are not clarified by the buyer or preliminary services of the buyer not provided in time the delivery dates shall be extended accordingly. Delivery dates shall be deemed as adhered to with the report that the goods are ready for shipment.
- 4.2 The seller is entitled to make partial deliveries after coordination with the buyer.
- 4.3 The buyer has to check 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.
- 4.4 Delays in delivery by interferences to operation, official measures or force majeure shall lead to an extension in the delivery deadline after coordination with the buyer. It shall also be deemed force majeure 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 11 (liability).
- 4.5 If the buyer suffers damages through a delay in delivery caused by the seller the buyer can request compensation for these damages as a maximum in the amount of 5% of the value of the part of the whole delivery concerned. 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 injuries are caused to the life, body or health by the delay in delivery for which the seller is responsible. In the event of the delay in delivery the buyer can cancel the contract after setting a reasonable final deadline if the service is not carried out within this final deadline. Further claims in case of delay in delivery, in particular claims for damages, are excluded according to the regulations in Subclause 11 (liability).

### 5. Shipment and passing of risk

- 5.1 The delivery is made 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 owing to individual agreements and/or insures it or assembles or erects the object of delivery at the buyer.
- 5.2 The seller shall take out transport insurance at the request and at the costs of the buyer. The seller is entitled to name itself as beneficiary. With the selection of the transport insurer it shall only be liable for the own

customary care and attention.

- 5.3 Objects of delivery which have been reported ready for shipment must be called immediately upon attainment of the delivery date. If the shipment is delayed as a result of circumstances for which the buyer is responsible it shall be deemed in default on the day of the report that the goods are ready for shipment. The regulation of § 294 BGB [Civil Code] according to which the service actually has to be offered to the creditor (buyer) just as it can be effected, is excluded. The risk shall thus pass to the buyer. In this case the seller shall store the goods at the risk and costs of the buyer.
- 5.4 Each increase in the freight costs by a subsequent change to the type of transport, the transportation route, the place of destination or similar circumstances which have an effect on the freight costs shall be for the account of the buyer.
- 5.5 Obvious losses or damages during the transport are to be noted by the buyer with a corresponding reservation on the freight receipt. In addition, they are to be reported to 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 caused 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.
- 5.6 Damages or losses caused by the transport shall not release the buyer from the full payment of the purchase price to the seller. Possible payments of the transport insurance according to Subclause 4.2 shall exclusively be carried out as conditional payment.

### 6. Prices and change in price

- 6.1 The prices shall apply ex works plus the respective applicable rate of value added tax upon conclusion of the contract. Decisive is the price stated in the order confirmation.
- 6.2 The seller can additionally charge the buyer packaging costs at the cost price. Disposal costs for packaging material, which are incurred for the account of the seller according to the corresponding statutory provisions shall be invoiced to the buyer and paid hereby.
- 6.3 If the statutory rate of value added tax is increased between conclusion of the contract and actual delivery the agreed gross purchase price shall be increased accordingly.
- 6.4 If the buyer procures the goods from the seller at the list price and if the list price increases between conclusion of the contract and actual delivery the agreed purchase price increases accordingly. Possible agreed discounts are also to be taken into consideration with regard to the increased purchase price. If the purchase price agreement is not based on the list price the seller is entitled to subsequently adjust the purchase price to a reasonable extent if the cost factors for the goods or for other agreed services do not increase insignificantly. The increased amount of the price adjustment may not exceed the scope of the cost increase. If such a price adjustment leads to a substantial increase in price 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 the seller despite corresponding proof is not willing to satisfy the contract at this other price.
- In case of sales at release order the seller is bound to the confirmed price for a period of three months from the date of the order confirmation. In case the goods are called after expiry of the deadline the seller is entitled to charge the price which is valid at the time of the release order. In case of sales, which are not carried out at release order the seller is bound to the confirmed price for a period of four months from the date of the order confirmation.

### 7. Terms of payment, offsetting and right of retention

- 7.1 In the absence of a special agreement the payment is to be made immediately net cash free of charge for the seller.
- 7.2 The receipt on the seller's bank account is decisive for the satisfaction, the punctuality of the payment and the occurrence of possibly agreed cash discounts. Payment by cheque and/or bill of exchange is exclusively carried out as a conditional payment.
- 7.3 There is no obligation to accept customer bills of exchange or promissory notes. 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 of income or asset circumstances of the buyer has occurred which is relevant for the payment of the claims or such is expected for the future owing to objective circumstances. In the event of a deferral or agreement of instalment payments all claims against the buyer shall be 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 outstanding amount accounts for less than 10 % of the outstanding claims.
- 7.4 The seller can, after the buyer is in default, request a dunning fee of € 3.00 in addition to the statutory interest rate on default for each dunning letter. The buyer is however entitled to provide the proof that the seller suffered a lower cost share than € 3.00 per dunning letter.
- 7.5 An offsetting of the buyer against counter-claims as well as the assertion of rights of retention are excluded unless it concerns undisputed claims or claims which are declared final and binding of the buyer. This shall also apply with the assertion of defects.

### 8. Quality and defects of quality

- 8.1 Dimensions, service descriptions and other details concerning the condition of the object of delivery shall serve for purposes of specification.

It does not insofar concern guarantees of the seller. Possible public advertising statements/ product details of third parties or of the seller are not the object of the contractual product specifications unless the seller reaches a corresponding agreement with the buyer. Insofar as the materials which are to be used by the seller have been specified as per contract it shall only guarantee the compliance with the specifications and not the suitability of the materials for the contractual purpose. It is only obliged to give any indications in case they are obviously unsuitable.

- 8.2 The buyer undertakes to properly inspect the delivered goods at its costs immediately after receipt and to report possible defects as well as false deliveries or shortfalls in quantities to the seller immediately in writing. An exclusion deadline of seven days from receipt of the delivery shall apply to the report. Hidden defects are to be reported to the seller in writing immediately after their discovery.
- 8.3 Possible defects of quality of a partial delivery shall not entitle to refuse the rest of the concluded quantity unless the buyer can prove that the acceptance of only part of the delivery is unreasonable for it by taking the circumstances into consideration.
- 8.4 Damages, which have been caused by external influence, improper handling, faulty operation, customary wear and tear or corrosion, are excluded from the liability for defects.
- 8.5 Claims for defects shall not exist with only an insignificant deviation from the agreed condition or usability. Incidentally, claims for defects of the buyer are limited to an entitlement to subsequent improvement or substitute delivery. The option lies here with the seller. The seller is entitled to carry out up to three attempts at subsequent improvement or substitute deliveries. If the subsequent improvement or the subsequent delivery fails the buyer has – irrespective of possible claims for damages according to Subclause 11 – a right to reversal of the contract or reduction of the remuneration for the service concerned at its choice. If the specified service quantities are not achieved the buyer shall be entitled to a right to reduction after the failure of the remedy of the defects.
- 8.6 Claims for defects of quality shall become statute-barred in one year from delivery. This shall not apply insofar as the law stipulates longer deadlines according to § 438 Par. 1 No. 2 (Buildings and objects for buildings), § 479 Par. 1 (claim for recall) and § 634 a Par. 1 No. 2 (Building defects) BGB [Civil Code], in case of a wilful or grossly negligent breach of duty of the seller, in case of malicious failure to disclose a defect as well as in the cases of the injury to life, the body or the health. The statutory regulations concerning inhibition to expiry, inhibition and new begin of the deadlines remain unaffected. Claims for defects of quality for provided subsequent improvements or substitute deliveries shall become statute-barred in three months after completion of the subsequent improvement or substitute delivery, however not before the expiry of the original deadline.
- 8.7 If the object is subsequently transported to another location than the branch of the buyer and if the expenses which are necessary for the purpose of subsequent satisfaction are increased hereby, in particular transport, route, material or labour costs then these are not to be borne by the seller. This restriction shall not apply if the transport of the object of the delivery corresponds with its use as intended.
- 8.8 Claims for recourse of the buyer against the seller shall only exist insofar as the buyer has not reached any agreements which go beyond the statutory claims for defects with its buyer.
- 8.9 Incidentally, Subclause 11 (liability) shall apply to claims for damages. Further claims of the customer against the supplier owing to a defect of quality or other than those regulated in this Subclause 8 are excluded.

#### 9. Impossibility of the service

- 9.1 If the whole service becomes impossible for the seller before passing of risk owing to a circumstance for which the seller is responsible the seller's claim for remuneration shall cease to apply. In the event of a partial impossibility or a partial incapability the claim for remuneration shall cease to apply pro rata. The claim for remuneration shall in this case however cease to apply in full if the buyer can prove a justified interest in the refusal of the partial delivery and does not accept it for this reason. Further claims of the buyer, in particular claims for damages, are limited according to the regulations in Subclause 11 (liability).
- 9.2 If the impossibility occurs during the delay of acceptance or by a fault of the buyer the buyer shall remain obliged to satisfaction.

#### 10. Reservation of title

- 10.1 The delivered goods (reserved goods) shall remain the property of the seller until the full payment of all claims of the seller existing from the business relationship with the buyer at the time of the respective conclusion of the contract. The reserved goods shall in addition remain its property until the full payment of the future claims of the seller.
- 10.2 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 – in the name of or for the seller, i.e. legally the seller is the producer of the new objects so that an acquisition of ownership of the buyer – contrary to the regulation of § 950 BGB – does not take place. In the event of the processing of reserved goods and objects of other owners by the buyer or its subcontractors this is at the same time carried out – free of charge – for the seller and the buyer. If the buyer has reached agreements in this respect with the owners of other objects involved in the processing the processing shall also be 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 each degree of the processing.

The seller acquires co-ownership to the individually produced objects in the ratio of the pro rata invoice value for the respective processed reserved goods to the total value of all processed objects. The same applies to the cases of the connection and mixing or combining ( §§ 947 and 948 BGB)

as well as for the connection of the reserved goods with a property (§ 946). All connections of reserved goods with a property shall only be carried out for the temporary purpose. The buyer grants the seller a right of use to the reserved goods.

- 10.3 Should the ownership of the seller to the reserved goods nevertheless lapse due to special actual or legal circumstances the buyer hereby now already agrees to the transfer of ownership to the produced objects to the seller at the time of the production. This shall respectively also apply in the event of multi-stage processes of this kind.
- 10.4 In the cases of the processing of objects of various owners as described above (§ 950 BGB), the connection (§ 947 BGB) or mixing or combining (§ 948 BGB) the buyer hereby already consents to the assignment of co-ownership in the amount as described above. The safekeeping by the buyer is carried out for the seller free of charge. In all of the afore-mentioned cases the buyer respectively acquires a corresponding remainders to the produced or established uniform objects. The objects established from the processing as well as the objects assigned to the seller in full or in part shall also be deemed as reserved goods within the meaning of these terms and conditions.
- 10.5 The buyer shall send the seller all information which is necessary for determining its ownership share.
- 10.6 Pledges or assignments as collateral of the reserved goods to third parties and the assignment or pledging of remainders for this 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 informed immediately. The costs for an intervention by the seller shall be for the account of the buyer insofar as they cannot be obtained from the respective third party.
- 10.7 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 shall not be deemed as a cancellation of the contract.
- 10.8 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 the connection or the processing and the subsequent resale it is entitled to sell the processing product in the proper course of business. This shall not apply if the reserved goods are not determined for the direct resale or the processing with subsequent resale. In this case the resale requires the prior consent of the seller. The resale is not permitted either if the buyer has disposed over the incurred claim for payment in advance 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 effective as of the time at which they are incurred in full will all secondary and collateral rights to the seller. 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 to 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 is carried out in the amount, which corresponds with the value of the reserved goods delivered by the seller invoiced by the seller to the buyer and reserved goods 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 in a current account relationship existing with its buyers then the respective recognised balance claims and the final balance claim are insofar assigned to the seller as individual (partial) claims are included therein, which would have been assigned according to the afore-mentioned provisions if it had not concerned claims which were to be entered in the current account. The books of the buyer shall be decisive for the determination of the third party debtor according to first and last names, address and amount of the claim. Each other assignment, pledge or otherwise encumbrance of these claims or parts of claims is not permitted.
- 10.9 The buyer can as long as it satisfies its 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 claims by way of the factoring if at the same time the obligation of the factor is substantiated, to effect the counter-service in the amount of the claim share of the seller directly to the seller as long as claims of the seller still exist against the buyer.
- 10.10 With the default of payment of the buyer by more than one month, the suspension of payment of the buyer, a cheque or bill of exchange objection at the buyer (insofar as the seller in any way is the beneficiary of this cheque or bill of exchange), an executed attachment of the reserved goods or the application for the opening of the insolvency proceedings or in court or out-of-court composition proceedings over the assets of the buyer the rights of the seller to processing or connection/ mixing as well as the right to the resale of the reserved goods and also the right to collect the claims shall lapse. The seller is to be informed about these afore-mentioned events immediately. A list of existing reserved goods is to be sent to it. The reserved goods are to be stored separately and at its request to be handed over to it immediately. 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 when established as well as with first and last names and addresses of the third party debtors. This shall also apply to all other information which is necessary for the determination and the collection of the claims.

The third party debtors are to be informed immediately by the buyer about

the assignment which was carried out. The buyer has to provide the seller an assignment deed upon request. The monies received on the claims assigned to the seller after the lapse of the right to collect the claim 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 safekeeping in trust for 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 hereby accepts this assignment.

10.11 After taking the goods back according to Subclause 10.7 or cancellation of the contract the seller is entitled to sell goods which were taken back at its liberty.

The sales proceeds will be credited to the buyer. To be deducted from the sales proceeds are reasonable re-collection, processing and sales costs. The salaries of the employees of the seller used for this are to be estimated pro rata. To be estimated as sales costs are 25 % of the sales proceeds. Credited is however 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 are taken back by taking their condition into consideration when they are taken back and their location. In case of goods, which were produced by the seller, As a maximum the direct self-cost price of the seller will be credited by disregarding administration and sales costs. The credited amounts will be offset against our claims until the latter have lapsed.

10.12 The buyer undertakes to sufficiently insure the reserved goods at the value as new at own costs to the customary extent in any case however against fire, storm, water and damages due to theft and to prove the insurance cover to the seller upon request. It 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 relating to the reserved goods of the seller to the seller. The seller accepts the assignment. The other provisions agreed within the framework of this reservation of property shall apply accordingly.

10.13 Insofar as the secured claims of the seller are secured by reserved goods and/or assignments or other collateral not just temporarily for more than 110% the seller shall at the request of the buyer at its own choice release collateral rights up to the afore-mentioned limit. The realisable proceeds in case of sale of the collateral is to be assumed when valuating the collateral. In no way however is a higher value to be assumed than that value which according to the afore-mentioned regulations is to be credited to the buyer in the event that the goods are taken back or in the event of the collection of the claim by the seller. Claims are to be valued according to the principles or proper bookkeeping and if applicable discounted. The buyer has to inform the seller of the information which is necessary for this valuation immediately upon request.

## **11. Liability**

11.1 The following exclusions of and restrictions to liability shall also apply to claims in tort insofar as these compete with contractual claims.

11.2 The liability of the seller for damages no matter of what kind is excluded. This exclusion shall not apply – to damages, which the seller caused wilfully or gross negligently; - in cases of slight negligence to damages which are due to an injury to life, the body or health as well as – subject to the regulation under Subclause 3 – to damages which are due to a breach of essential contractual duties by the seller.

11.3 In the cases of negligent breach of essential contractual duties the liability of the seller – with the exception of injuries to life, the body or the health – however to the typical foreseeable damages for the contract, which were foreseeable for the seller upon conclusion of the contract or commitment of the breach of duty. Insofar the liability of the seller is excluded for damages which can be exclusively attributed to the scope of risks of the buyer.

11.4 Claims for damages owing to slight negligence of the seller according to Subclauses 11.2 and 11.3 above are excluded if they are not made pending at the court within a period of three months after refusal of the claims by the seller or its insurers.

11.5 The afore-mentioned liability exclusions and restrictions shall also apply to the liability of the seller for its bodies, employees and vicarious agents as well as to the personal liability of the bodies, employees and vicarious agents of the seller.

11.6 The seller shall be liable per damaging event, which is caused by gross negligence of vicarious agents, who are not legal representatives or executives, as a maximum up to the amount of € 100,000.

11.7 The afore-mentioned liability exclusions and restrictions in the Subclauses 11.1 to 11.6. shall not apply to mandatory claims according to the Product Liability Act. Neither shall they apply if the seller has submitted a guarantee of condition or durability.

11.8 Claims for damages of the buyer shall become statute-barred within one year from knowledge of the buyer of its claims insofar as these Terms of Sale and Delivery do not envisage shorter deadlines in Subclause 8.6 or the law. The legal statute-of-limitations shall apply to claims according to the Product Liability Act.

## **12. Place of performance, place of jurisdiction, applicable law**

12.1 The place of performance for the payment and the goods delivery is Rostock.

12.2 Hamburg shall be deemed as additional place of jurisdiction towards buyers, which are merchants, legal entities under public law or special assets under public law. Actions against the seller can only be made pending in Hamburg.

12.3 German substantive law shall apply exclusively under the exclusion of the UN Convention on the International Sale of Goods (CISG).

## **13. Non-disclosure obligation**

The buyer undertakes to maintain strict secrecy concerning information about the technical and commercial know-how of the seller of which it becomes aware within the framework of the business relationships and only to se this for the purpose envisaged as per contract. This obligation shall apply for the duration of the business relationship and beyond this for period of two years after termination of the business relationship. It does not refer to publicly knowledge, which became known without breaching this non-disclosure obligation.

## **14. Data protection**

14.1 The seller is entitled to process and store the data about the buyer received in connection with this business relationship – even if these stem from third parties – within the meaning of the data protection act and to have these processed and stored accordingly by third parties commissioned by the seller.

14.2 For the purpose of the decision about the establishment, execution and termination of the contractual relationship or before the delivery against invoice the seller shall assess if applicable based on credit agency data the risk of the default of payment by including a credit scoring. To this end VUS shall call credit rating information based on mathematical-statistical processes by using address data.