

Duesmann & Hensel Recycling GmbH

General Terms and Conditions of Trade

1. Sphere of application / Introduction / General

- a) The terms and conditions of trade set out below (hereafter referred to as "Terms") shall apply to all business dealings with Duesmann & Hensel Recycling GmbH (hereafter referred to as "D&H"). D&H is not bound by any differing provisions in the terms and conditions of trade of our business partners (suppliers) or which result from collateral agreements, if they have not been expressly made part of this contract in writing.
- b) Taking delivery of and/or delivering goods, and receiving and/or providing services, irrespective of their nature, or the acceptance of payments does not under any circumstances imply that our partner's general terms and conditions of trade have become part of the content of this contract.
- c) Our terms and conditions shall apply to future business dealings even if they have not been included in a particular case.

2. Offers and contracts

- a) Offers by D&H are subject to confirmation. A contract is not concluded until D&H has given a confirmation of order in writing even in standard form subject to Section 1 of the Terms.
- b) Amendments or supplements to a contract or the cancellation of a contract do not become an effective part of the contract until D&H have given written confirmation of them in terms of Sect. 1.

3. Deliveries

- a) With each order placed, the supplier must first give a clear declaration with regard to the materials. This declaration shall include, for example, the following matters or points: waste disposal index number under the *Abfallverzeichnisverordnung* ("AVV" - regulations on waste substances index numbers) including the description; *Nachweisverordnung* (regulations on disposal and recycling documentation), *Gefahrgutrecht* (Dangerous goods law); *Gefahrstoffverordnung* (Hazardous substances regulations), etc. as well as any declaration on general quality and composition – i.e. content of precious metals – of the material. The supplier shall assume responsibility for the accuracy of the waste substances declaration. He is under a duty to provide full and accurate details. The declaration analyses required must be produced on request.
- b) If it is established during the control of incoming materials or during subsequent processing that there are prohibited substances, the customer must take them back at his own expense. Otherwise, D&H will dispose of the waste according to regulations, at the customer's expense 10 working days after written request. D&H can also dispose of the waste according to regulations if a special request is made. D&H is entitled to have the contractual obligations carried out by third parties. D&H has the right, to entrust third parties with the execution of contractual tasks, provided that the waste management takes place in approved facilities.
- c) D&H is entitled to take a sample from the residues provided to it and to use this as a basis for a binding quality sample. D&H is entitled to reject any residue or waste which does not correspond with the declaration.
- d) The supplier shall bear the cost and risk of the delivery of materials to our plant. This applies even if transport is made available by our plant. Any agreements to the contrary shall only apply if they have become part of the content of the contract.
- e) The materials must be packed properly, and any instructions given by D&H must be followed. Empty containers will only be returned if there is a specific request. However, the supplier must bear the costs incurred.
- f) Delivery of materials must be notified in writing at least 24 hours prior to delivery. The customer shall pay any additional costs which arise due to incorrect or incomplete information or if an advice-note on the goods delivered is missing or late.

4. Provisions under the laws on waste substances

- a) D&H's approval is required for the delivery of substances which display one or more dangerous characteristics, e.g. components which are toxic, damaging to health, carcinogenic, sensitising, impair fertility, cause hereditary genetic damage, are dangerous to the environment, corrosive, irritating, inflammable, likely to explode, oxidising or radioactive, and for the delivery of substances with damaging or harmful elements (e.g. arsenic, lead, bromine, cadmium, chlorine, fluoride, halogen connections, mercury, selenium, tellurium etc).
- b) The supplier shall be obliged to draw attention to the existence of any of the substances given in a) above, in addition to the declaration under Section 3.
- c) Furthermore, the supplier must ensure that the dangerous materials delivered by him and/or on his instructions are transported and packed in accordance with the relevant regulations.
- d) The supplier is solely responsible for the correct declaration of the given residual materials. This also applies if D&H acts on suppliers behalf in dealings with the authorities or other third parties.
- e) To the extent that the materials delivered fall under the provisions of the dangerous goods act, the customer must ensure that the legal provisions to which it is subject to are complied with and that the corresponding transportation papers are available. This shall also apply if D&H has arranged for collection.

5. Weighing, treatment, settlement and accounts

- a) The weights which apply shall be those determined by D&H after receipt of each delivery at its plant and notified to the supplier with the order confirmation.
- b) The information on weights thus obtained is binding on D&H and the supplier, provided that the latter has not made a written objection to them within two weeks. The time limit shall begin as per point f).
- c) Apart from that, D&H is authorised to process the materials subsequent to weighing.
- d) Furthermore, the weights determined in connection with the confirmation of order (or the weights resulting after homogenisation) and, in the event of reworking, the precious metal content established through sampling and assaying, form the basis for the settlement statement issued by D&H, which shall become binding if the supplier has not made a written objection to it within two weeks. The time limit shall begin as per point f).
- e) D&H will keep a precious metals pool-account for any customer, who gets precious metals returned from the treatment of materials containing them, if necessary. D&H will determine the actual balance of the account with appropriate care and notify it to the customer by a written statement of account. This will be taken as legally binding unless objected to in writing within two weeks of receipt of the statement. The time-limit shall begin as per point f).
- f) The time limit for objections under points b), d) and e) shall commence on the day on which the relevant notification is issued (order confirmation or settlement statement).

6. Processing costs

- a) The prices stipulated in our quotations are subject to confirmation and do not include any applicable sales tax.
- b) Furthermore, D&H reserves the right to make an appropriate increase to the prices originally quoted if the materials have special characteristics of which D&H were not aware of when the order was accepted and which result in additional expenditure in processing. This applies in particular to dangerous goods within the terms of Section 4 and hazardous waste.

7. Payment for and return of metal

- a) If the precious metals extracted from the material, or other metals for which payment can be made, are purchased, the buying-in prices will be determined on the basis of the metal prices which are valid on the settlement date.
- b) The supplier must give D&H written notice no later than 1 week before agreed settlement date if he desires a later purchase.
- c) If a physical return of the precious metals has been agreed upon, then it will be at the cost and risk of the supplier.
- d) Furthermore in the case of physical return, D&H is entitled to select the packaging, method of forwarding and the route, using the most appropriate method according to D&H's best judgement. If the forwarding agent or carrier takes delivery of the consignment without making any objection, this shall be deemed to be evidence that there are no defects in the packaging.
- e) Furthermore, D&H is also entitled to take out transport insurance or valuables insurance in transit on behalf of and at the expense of the supplier.
- f) Section 1, point a) shall not be affected by points d) and e).

8. Payment

- a) D&H's invoice shall in principle fall due on receipt. Variations to this may be made in accordance with Section 1, point a).
- b) If a claim should appear to be at risk for particular reasons or if the supplier should default in payment within the period stipulated, then D&H are entitled, without further consent by the supplier, to retain, set off and sell in D&H's own name the quantity of metal under existing contracts, whose market value corresponds to the claim to be satisfied or covers it in part. The supplier shall pay the costs incurred.
- c) Furthermore, D&H reserves the right to require advance payments or security deposits if circumstances about the supplier exist or become known, which put at risk settlement of D&H's

claims. If the supplier does not fulfil such a demand, then D&H shall be entitled to terminate the contract. The supplier shall bear the costs incurred until that time.

- d) Furthermore, D&H shall be free to demand compensation from the supplier for any inconvenience and damages which D&H suffers as a result of terminating the contract. Furthermore, in the event of the issue of a credit note for the value of metal resulting from reworking, D&H shall be entitled to set off the amount of the invoice for re-working with the value of metal contained in the credit note or to deduct it from the payment to be made. D&H shall be entitled to retain goods/precious metals until final payment of the invoice.

9. Transfer of ownership

- a) The supplier shall retain ownership of the materials delivered or the metals recovered by D&H during the entire period of treatment. If the material is combined or commingled with other materials, the supplier shall in any case become co-owner. However, D&H shall be entitled to restore the supplier's sole ownership at any time at its discretion.
- b) Every payment by D&H, whether for advance payment or final settlement and whether in cash or in kind, shall result in transfer of ownership in the relevant goods. If such an (advance) payment should be made for goods in the possession of the supplier, then the supplier must ensure that there is adequate comprehensive insurance for the goods taken out at his own expense. The goods must be separate from the supplier's own material.

10. Complaints

- a) Complaints of any kind must be made to D&H immediately and in writing, and no later than within one week after receipt of the settlement statement and return delivery.
- b) If there is a justifiable objection to the composition of the metals or the precious metal products/combinations D&H has delivered, then D&H will either exchange them for goods which have no defects or issue a credit note for the value.
- c) Claims by the supplier beyond that in relation to material damage, pecuniary loss or other loss (e.g. from pre-contractual or contractual liability or unauthorised action, etc.) will be settled only to the amount of D&H's risk coverage, provided that the supplier provides an exact assessment of the damage and has proven the amount of the loss.
- d) If the supplier fails to take up a claim within the period given in point a), then a later claim will not be considered.

11. Delivery times

- a) Delivery times shall only apply if they have been expressly confirmed by D&H in writing (cf Section 1, point a). If the material delivered should vary from the original agreement in composition and quantity, extended delivery times are permissible.
- b) In the event of an Act of God in terms of Section 13, point a) and b), the provisions given therein shall apply.

12. Trade in and transfer of precious metals

- a) Telephone orders by the customer will be binding after confirmation by D&H.
- b) The supplier shall bear the damages resulting from errors in transmission, misunderstandings or errors in telephonic communication with the supplier or with third parties, provided that there is no fault on D&H's part.
- c) D&H reserve the right to cancel credit notes given as a result of an error, a spelling mistake or for any other reasons, without the need for an instruction, simply by making a book entry.

13. Liability

- a) The supplier is liable should there be a violation of the provisions of our Terms which form the basis of the delivery of materials. This applies in particular to the declarations in terms of Section 3 on the basis of a dangerous composition, or through harmful or irritating elements, loss or detriment could occur.
- b) The supplier is liable for all detriments and losses which are due to the dangerous composition of the material or their harmful or irritating elements. Such liability shall in principle come to an end upon full completion of the treatment (recycling) and waste disposal of the material.
- c) If, on the other hand, the material is one with continuing damaging effect, then the supplier's liability shall continue until the damaging effects have fallen below the permissible values. This applies in particular to radioactivity.
- d) D&H is liable to the supplier for loss or damage to materials which are with D&H for processing only where there has been intentional or grossly negligent improper action. Claims by the supplier beyond that in relation to material damage, pecuniary loss or other loss (e.g. from pre-contractual or contractual liability or unauthorised action, etc.) will be settled only to the amount of D&H's risk coverage, provided that the supplier provides an exact assessment of the damage and has proven the amount of the loss.
- e) The amount of the claims is limited to the current value of the materials. In general, no claims for compensation of any kind may be made against D&H by the supplier or any of his customers in the event of an Act of God under the terms of Section 15, points a) and b).

14. Acts of God

- a) In the event of an Act of God (such as but not limited to earthquake, war, shortage of labour, energy or raw materials, orders by public authorities, operating difficulties, riot, looting and similar events), the effect of which is that the availability of metals required cannot be guaranteed, D&H shall be released from performing the contractual obligations affected thereby for the duration of the impediment.

15. Data processing

- a) D&H is entitled to store and to process all information affecting its business relationship with the partner in terms of the *Bundesdatenschutzgesetz* (German Privacy Act).

16. Levies

- a) The supplier shall be responsible for paying any taxes, duties and other levies which are raised on the goods and associated documents on deliveries from abroad within or outside of the Federal Republic of Germany.

17. Place of business and jurisdiction

- a) The place of business and jurisdiction for all obligations under the contract shall be our business location in D-63743 Aschaffenburg.
- b) An obligation to make a payment to D&H shall be deemed to have been fulfilled when the payment in question has been credited to our company account at the place of payment given in the invoice and the amount is available for D&H's use. In the case of Section 8, point d), the obligation to make payment to D&H which arises under the contract shall be deemed to have been satisfied as soon as D&H have set off the relevant amounts (cf. Section 8, point d).

18. General provisions

- a) The law of the Federal Republic of Germany shall apply to contracts with D&H, excluding the Uniform Law for the International Sale of Goods.
- b) If any one of these Terms should be legally ineffective, this shall not affect the other Terms.
- c) In the event of partial nullity, the parties shall be required to settle the affected passage immediately. If this is not successful, then the laws of the Federal Republic of Germany shall apply.
- d) The legally binding version of these terms is issued in the German language. In case of any conflicts, misunderstandings or errors in translation, the German version will supersede this translation.

Duesmann & Hensel Recycling GmbH
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