

General Terms and Conditions of Purchase of Paul Jost GmbH

Status: February 2017

A. General

1. Our Terms and Conditions of Purchase apply exclusively to all current and future business relationships. We shall not recognise any terms and conditions of the supplier which are contrary to or different from our Terms and Conditions of Purchase unless we have explicitly agreed to their applicability in writing. Our Terms and Conditions of Purchase shall apply even if we accept the delivery of the supplier without reservation in the knowledge of the terms and conditions of the supplier which are contrary to or different from our Terms and Conditions of Purchase.
2. All agreements made between us and the supplier to execute this contract, i.e. which do not concern the conclusion of contract as such, must be set out in writing. For its part, any contracting-out of this written form requirement shall be required in writing. The written form is equivalent to transmission by fax or e-mail.
3. Our Terms and Conditions of Purchase shall only apply to companies pursuant to Section 310 (1) German Civil Code (BGB).
4. "Scrap" refers in the following to scrap and other materials.

B. Offers – conclusion of contract

1. Any offers addressed to us for deliveries shall only become binding on us once we have confirmed them in writing.
2. Our orders are only valid in written form and must be confirmed by the supplier in writing within 2 weeks of receipt of the order to be effective, precisely stating the delivery period, the binding end price (gross) and any special contractual agreements. If the order confirmation deviates from our order, the deviations shall only become part of the contract if we expressly recognise them in writing.
3. If the supply agreement comes about we are obliged to accept the scrap described in more detail in the offer in accordance with the following terms and conditions.
4. Agreed delivery quantities shall be understood as net quantities. The net quantity is the agreed quantity of metal less any extraneous materials contained therein.

C. Terms and conditions of delivery

1. In the case of waste for which a disposal certificate must be provided in accordance with the German Ordinance on Waste Recovery and Disposal Certificates, the supplier must submit the responsible declaration of the allocation of waste to a waste type. In the case of cross-border waste deliveries, the supplier must provide evidence of compliance with the applicable provisions, e.g. the notification and information duties of the EC Waste Shipment Regulation. There shall only be a duty to accept on our part after submission of the aforementioned documents.
2. Radioactive scrap, explosives, substances containing explosives and non-metal elements shall be explicitly excluded from the delivery. The supplier warrants that the scrap delivered by him does not contain any of the aforementioned elements. The supplier shall similarly ensure that the applicable environmental protection and hazardous goods directives are observed, particularly also in the case of radioactive, biological or chemical contamination of the scrap delivered within the statutory limit values.
3. The supplier warrants that the goods supplied have the agreed properties, quality and condition and that they comply with any specifications we have made. The supplier undertakes to examine all goods for the agreed condition before delivering them to us.
4. Freight and/or delivery documents must be enclosed with every delivery. Any initialling of the freight and/or delivery papers by us may not be construed as a confirmation of the agreed quantity, quality, type of delivery or other contractual content.
5. Unless otherwise contractually agreed, the supplier is not entitled to make part deliveries. Otherwise we are permitted to also withdraw from the entire contract, to reduce, and assert damage claims in accordance with the statutory provisions.
6. We shall ascertain weight and quantity as well as condition of the scrap delivered (material properties and qualities) in a binding manner on delivery.
7. We are not obliged to accept greater or lesser quantities. In the case of deliveries in excess of the quantity noted in the order, we reserve the right to calculate the quantities delivered in excess of the order at the daily rate or to reject them. In the event of rejection of the quantities delivered in excess of the order, the supplier must bear the costs of outbound and inbound transport.
8. The supplier and people used by the customer for performance shall be on our business premises at their own risk. They must observe the applicable safety regulations and precautions when they enter our

business premises and must follow the work rules and the instructions of our employees. The supplier is responsible exclusively for securing the load.

9. If the supplier is in arrears of a contractually agreed performance or if his financial circumstances worsen considerably, we are entitled to reject the performance of the still outstanding (part) delivery of the contract and to request damages in accordance with the statutory provisions, or, where advance payment was contractually agreed, to request payment only contemporaneously against delivery.
10. If the delivery of specific quantities has been agreed, they must be met; under no circumstances may the quality or the weight deviate by more than 1% and in the case of “rough” weight details by a maximum of 5%.

D. Delivery period

1. The contractually agreed delivery period is binding unless we agree in writing to a deviation from the agreed delivery period. The receipt of the goods by us is decisive for the meeting of the delivery deadline.
2. The supplier is obliged to notify us immediately in writing if circumstances arise or become known to him which indicate that the agreed delivery period cannot be met.
3. If the agreed delivery period is exceeded or if we have not agreed to the exceeding of the delivery period, the supplier shall default without a warning letter.
4. In the event of default on delivery we shall be entitled to the statutory claims. In particular, we are entitled – after fruitless expiry of an appropriate period - to request damages instead of performance and/or to declare withdrawal from contract. If we request damages, the supplier shall be entitled to prove that he is not responsible for the infringement of duty.

E. Transfer of risk – documents

1. If nothing to the contrary has been agreed in writing, the delivery shall be made free house.
2. The supplier must ensure here that the statutory provisions and any official orders on the transport of scrap have been observed.
3. The supplier is obliged to exactly state our order number on all forwarding papers and delivery documents; if he fails to do so, we shall not be responsible for delays in processing.
4. The risk of transport shall be borne by the supplier up to unloading of the goods on our grounds if the supplier is obliged to transport the goods

under the terms and conditions of this contract and unless otherwise agreed.

5. If the supplier is released from the duty to deliver entirely or for the duration of the delivery impediments due to force majeure, and in particular fire, explosion, flooding, piracy, official measures for which the supplier is not responsible, labour dispute, shortage of raw materials or other comparable circumstances, we are entitled to withdraw from the contract after fruitless expiry of an appropriate period of grace. Proof of the existence of force majeure shall be incumbent on the supplier.

F. Prices – terms and conditions of payment – offset – retention

1. The calculation of the price to be paid for the delivered scrap shall be made on the basis of the quantity or weight determined by us and the material properties of the scrap. Unless otherwise agreed in writing, the price shall include delivery “free house”. If the goods are delivered packaged, the agreed price shall apply including this packaging.
2. The stated prices shall apply including the statutory rate of value-added tax as well as other costs and charges, in particular for transport, customs and insurance.
3. The contractually agreed prices are binding. We hereby object to any price changes or price reservations of the supplier.
4. We shall be entitled to offset and retention rights to the statutory extent. We are also entitled to offset with and against receivables – irrespective of the legal reason – even if cash payment or payment on account of performance has been agreed by one party.
5. Any receivable directed against us can only be assigned in whole or in part if we have given our prior written consent.

G. Reservation of ownership

The supplier may reserve ownership to the delivered goods or also request that damage claims are assigned to him in the event of blending or sale (extended reservation of ownership). By contrast, a current account reservation is not admissible.

H. Examination of defects – liability for defects, stolen goods

1. We are obliged to examine the materials within an appropriate period for any quality and quantity deviations; the complaint regarding recognisable defects is punctual at all events if it is received by the supplier within a period of five working days as from receipt of goods.

2. We shall be entitled to the statutory claims based on defects without restriction and the supplier shall be liable in particular also for mild negligence. At all events, we are entitled to request rectification or replacement delivery from the supplier as we so choose. We reserve the right to damages, in particular the right to damages instead of performance and to rescission due to failure to perform or failure to perform in accordance with the contract.
3. We are entitled to rectify the defect ourselves at the expense of the supplier if danger is imminent or if there is special urgency.
4. If the supplier is responsible for the defect, we shall be entitled to replacement of expenses against the supplier in accordance with the statutory provisions for any recall measures to be taken even if they go beyond the statutory scope of the recall obligation.
5. The limitation period is 36 months, starting from the transfer of risk. The limitation period shall be suspended by the complaint of defect until it has been successfully rectified or the supplier has objected to our rectification request in writing.
6. The supplier warrants that the goods are free from third party rights and in particular that the goods were not stolen. If it emerges that the delivered goods were stolen from a third party, we may withdraw from the contract and request the return of any payment already made – irrespective of whether we have returned the goods. In these cases we may replace the return of the goods by a written assignment of “any existing claims to return”.

I. Liability

1. We shall only be liable in the case of contractual, non-contractual – in particular tortious – claims as well as based on fault on conclusion of contract for wilful intent and gross negligence in accordance with the statutory provisions. In the same way we shall be liable for our statutory representatives and vicarious agents. We are liable furthermore for the culpable infringement of main contractual duties. Unless the contract has been infringed by wilful intent or gross negligence, liability shall be restricted to foreseeable, typical damage. Our liability shall otherwise be ruled out. Liability due to the culpable injury to life, body or health shall not be affected; this shall also apply to compelling liability under the Product Liability Act.

J. Rescission

1. We are entitled to withdraw from the contract in whole or in part if

1. The supplier fails to observe the public law provisions (law, ordinance, official order etc.) for the delivery, acceptance, storage and treatment of scrap at our business domicile;
 2. The supplier infringes contractually agreed delivery or acceptance conditions;
 3. The supplier makes false representations about the properties or the origin or scrap which has been accepted or is intended for acceptance;
 4. The supplier defaults on the delivery of scrap, particularly also if he reserved the right to his being supplied on time, or the properties of the scrap do not comply with the contractual agreements and does not satisfy the corresponding contractual duties within a period to be set by us which is coupled with the declaration that the acceptance of the scrap will be refused after expiry of the period;
 5. The delivery, acceptance, storage or treatment becomes inadmissible or unacceptable due to public law provisions after conclusion of contract;
 6. As a result of delivery, acceptance, storage or processing of scrap before conclusion of contract, unknown, more than negligible detrimental effects on our personnel or facilities or on personnel or facilities of third parties commissioned by us are to be feared and these effects cannot be countered by reasonable means; or
 7. We are permanently unable to satisfy our contractual duties due to a reason for rejection named in these General Terms and Conditions of Purchase.
2. If we withdraw from the contract in whole or in part, the supplier is obliged to take back delivered scrap which we have already accepted at his own expense. If he defaults on the duty to take back, we are entitled after fruitless expiry of an appropriate period to dispose of the delivered scrap at his expense. The statutory provisions on withdrawal from contract shall otherwise apply.
 3. In the event of rescission, the supplier must repay to us immediately any payments we have made including interest in the amount of the statutory default interest, calculated from the day following our payment. We shall be entitled to a right of retention to the respective goods up to the repayment of the amounts we have paid.

K. Rejection

1. We are entitled to reject in whole or in part the delivery and the acceptance of scrap temporarily, i.e. until rectification of the impediments described below if

1. The properties of the scrap do not comply with the contractual agreements;
 2. For reasons influencing the technical conducting of business, in particular weather, defective installations, material characteristics, an acceptance, processing, storage or any other contractually agreed handling of the scrap is rendered impossible;
 3. The financial circumstances of the supplier worsen, in particular insolvency, instigation of insolvency of composition proceedings, thereby possibly endangering any warranty claims we may have; or
 4. In the case of force majeure, strike, lock-out or similar reasons if this makes the satisfaction of our contractual duties impossible or unreasonable.
2. If the reasons for rescission described in J.1. of these General Terms and Condition of Purchase exist, we may also reject the delivery and acceptance instead of withdrawing from the contract.
 3. We are entitled to reject also if scrap is delivered at the instigation of the supplier without prior announcement.
 4. If we make use of our right to reject, the supplier is obliged to take back the scrap concerned and already delivered to our premises. If the supplier defaults on the duty to take back, we are entitled to dispose of the scrap at his expense after the fruitless expiry of an appropriate period.
 5. If the rejection is based on circumstances which the supplier or a third party commissioned by him has caused, the supplier is obliged to bear all costs we sustain as a result of this rejection.
 6. If the impediments leading to a rejection are rectified, the parties shall agree a new delivery data which permits the supplier to schedule delivery accordingly.

L. Public law provisions – holding harmless – third party liability insurance cover

1. The supplier warrants that no public law provisions and official requirements and no third party rights are infringed in connection with his delivery.
2. If we are sued by an authority or by a third party because of this, the supplier is obliged to hold us harmless against these claims on the first written request.
3. The duty of the supplier to hold harmless refers to all expenditure which we necessarily sustain arising from or in connection with action against us by an authority or a third party.
4. The supplier shall furthermore hold us harmless against all claims based on producer liability towards third parties. This shall not apply if we are

responsible for the damage in whole or in part and we are joint and several debtor of the respective claims together with the supplier.

5. Our claims against the supplier to being held harmless against action taken against us as set out in the above paragraphs 1 to 4 shall be maintained and shall be assertable for as long as authorities or third parties are able to assert claims against us.
6. The supplier undertakes to maintain a third party liability insurance policy with a cover sum of € 10 million personal injury/material damage – flat rate – for the duration of our business relationships; any damage claims to which we are entitled shall not be affected by this.

M. Data storage

We are entitled to suitably store data of our business partners, in particular also bank details and tax numbers, and to use them for our own purposes whilst observing the provisions of the Federal Data Protection Act. We are not entitled to pass these data on to third parties.

N. Place of jurisdiction – place of performance – severability clause

1. Exclusive place of jurisdiction is the court responsible for our Mülheim a.d. Ruhr business domicile. However, we are entitled to also bring action against the customer at his registered office.
2. The law of the Federal Republic of Germany shall apply exclusively; the application of the Convention on the International Sale of Goods (CISG) shall be ruled out.
3. Unless otherwise stated in the order, our registered office is the place of jurisdiction.
4. The inefficacy of individual provisions of this contract or parts thereof shall not affect the efficacy of the remaining provisions. The parties are obliged on the basis of that which can be reasonably expected in good faith to replace an ineffective provision by an effective provision that is equivalent to it in terms of financial success insofar as no main change in the contractual content is brought about; the same shall apply if a circumstance requiring regulation has not been explicitly regulated.