

1. scope of application

The Terms and Conditions 2017 shall apply to all consulting contracts, deliveries and services of UMWELT - TECHNIK - METALLRECYCLING GmbH (hereinafter "UTM").

2. terms of payment, offsetting, right of retention

2.1 For UTM deliveries and services abroad, payment shall be made by irrevocable and confirmed letter of credit from a major bank in the Federal Republic of Germany, payable in UTM's favour upon presentation of the documents to this major bank or by 100% advance payment. Any deviations must be defined accordingly in the payment terms of the respective offer.

2.2 Bills of exchange, cheques and other means of payment are only accepted on account of performance. For these means of payment, the date on which UTM can dispose of the amount is deemed to be the date of receipt of payment.

2.3 In any case, discount and collection charges and other costs of payment shall be borne by the customer.

2.4 Offsetting can only be asserted with regard to such a claim that is undisputed or has been legally established.

2.5 Rights of retention can only be asserted if they are based on the same contractual relationship.

2.6 In the event of late payment, UTM shall be entitled to charge interest at the respective bank rates for overdrafts, but at least 4% above the respective base interest rate in accordance with the Discount Transition Act of the German Federal Bank, plus value-added tax where required by law. All claims against the customer are due immediately if the terms of payment are not met.

2.7 In the case of repair exchange deliveries (RAT), 10% of the value of the goods in addition to the exchange amount shall be taxed as the value of the used parts in accordance with the VAT Act.

3. dispatch, packaging, transfer of risk

3.1 In the absence of a special agreement, the costs for dispatch and transport shall be borne by the customer. The same applies to packaging, which shall be carried out according to UTM's experience.

3.2 The risk shall pass to the Customer, even in the case of freight-free delivery, at the latest when the delivery parts are dispatched, even if partial deliveries are made or if UTM has assumed other services, e.g. delivery and installation. If dispatch becomes impossible through no fault of UTM, the risk shall pass to the Customer upon notification of readiness for dispatch.

4. delivery and delivery time

4.1 Weight, quality and dimension specifications in brochures, descriptions and offers are only approximate. We reserve the right to make reasonable deviations from such specifications and reasonable design modifications.

4.2 Any reference to technical standards is merely a description of performance. The assurance of a characteristic shall only exist if UTM confirms it in writing.

4.3 The period for deliveries and services begins with the dispatch of the order confirmation but not before the customer has provided the documents, permits or releases to be procured by him. Compliance with the period for deliveries and services presupposes the fulfilment of the Customer's contractual obligations.

4.4 The delivery period shall be deemed to have been complied with if the delivery item has left the factory or readiness for dispatch has been notified by the end of the period.

4.5 The deadline for deliveries and services shall be extended appropriately in the event of industrial action, in particular strikes, lock-outs and the occurrence of unforeseeable obstacles that are beyond the control of UTM, unless the delivery or service becomes impossible. In such a case of impossibility of delivery, UTM shall be released from its obligation to fulfil the contract. In the event that the delivery deadline is extended or UTM is released from its obligation to fulfil the contract, any claims for damages by the Customer arising from this shall not apply.

5. resignation

5.1 The Customer may withdraw from the contract if UTM is finally unable to provide the entire service before the transfer of risk. The same shall apply in the event of UTM's inability to perform. The Customer may also withdraw from the contract if, in the case of an order for similar items, the execution of part of the delivery becomes impossible in terms of quantity and the Customer has a justified interest in refusing a partial delivery. If this is not the case, the Customer may reduce the consideration accordingly.

5.2 If there is a delay in performance and the Customer grants UTM, which is in default, a reasonable grace period in writing with the express declaration that it will refuse to accept the service after this period has expired, and if the grace period is not met, the Customer shall be entitled to withdraw from the contract.

5.3 With regard to further claims, Section 9 of these Terms and Conditions 2017 shall apply.

6. reservation of title

6.1 The delivered chemicals, metals and/or installed items (reserved goods) remain the property of UTM until all claims arising from the business relationship with the Customer, regardless of their legal basis, even if payments are made for specially designated claims. In the case of a current account, the retained ownership shall be deemed security for UTM's balance claim.

Any processing or treatment of the reserved goods is carried out on behalf of UTM, which is considered the manufacturer according to § 950 BGB (German Civil Code). This treatment or processing shall take place free of charge and without any obligation on the part of UTM:

If the Customer processes, combines or mixes the goods with other movable objects that do not belong to UTM, UTM shall be entitled to co-ownership of the new object in proportion to the invoice value of the goods subject to retention of title to the other objects used by the Customer at the time of processing, combining or mixing. Otherwise, the same applies to the new product resulting from the processing, combination or mixing as for the reserved goods. It shall be deemed to be reserved goods within the meaning of these conditions.

6.2 The Customer's claims arising from a resale of the reserved goods are hereby assigned to UTM as security for all, including future claims of UTM arising from the business relationship, regardless of whether the reserved goods are resold without or after processing and whether they are resold to one or more buyers.

The Customer is authorised to collect these assigned claims even after the assignment unless the Customer stops payments or UTM revokes this collection authorisation. UTM's authority to collect the assigned claims itself remains unaffected.

Upon request, the Customer shall immediately inform UTM in writing to whom it has sold delivery items, which claims it has from the sale and shall hand over the documents required for collection.

6.3 The Customer shall only be entitled and authorized to resell the reserved goods on the basis of a purchase contract, a contract for work and materials, a contract for work and materials, or any other contract, if the Customer reserves UTM's ownership rights to a third party purchaser until such time as the delivered goods have been paid for in full. The Customer is not entitled to dispose of the reserved goods in any other way, in particular pledging or transfer of ownership by way of security. At UTM's request, the Customer shall be obliged to notify its purchaser of the assignment to UTM for payment.

6.4 If the value of the existing securities for UTM exceeds its claims by more than 20%, then UTM shall, upon request by the Customer or a third party affected by the over-securing of UTM, release securities at UTM's discretion.

6.5 The Customer shall immediately inform UTM of any attachments, confiscations, and other dispositions by third parties.

7. notice of defects and acceptance

7.1 The customer must unpack deliveries immediately after delivery to determine missing quantities and transport damage. In the event of transport damage, a damage report must be drawn up immediately to secure any claims for damages against the transport company (post office, railway, forwarding agent, etc.). A defect in the goods can only be claimed within one week of receipt of the goods unless the defect in question is not obvious. Defective work must be reported to UTM immediately after detection to avoid losing the right to rectify the defect.

7.2 If the customer is prevented by strike or lockout from carrying out the acceptance, the period for acceptance as well as the period for notification of defects according to the previous paragraph shall be extended to a reasonable extent.

8. warranty

8.1 UTM warrants for defects and for the absence of warranted characteristics in delivered chemicals, metals, new items or services rendered in accordance with the following provisions:

8.2 The warranty period for new items (excluding chemicals and metals) is 12 months from the date of acceptance of the services.

In the case of delivered goods, the warranty shall exclusively relate to the absence of defects when they leave UTM. In the case of services, the warranty shall relate to the absence of defects at the time of their completion or their acceptance and, in connection with delivered chemicals and metals, only to the absence of defects at the time of acceptance at the UTM factory.

8.3 The warranty (excluding chemicals and metals) shall consist of free repair or, at UTM's discretion, replacement.

If the repair or replacement fails, the customer may demand a reduction in the price or, at his discretion, cancellation of the contract.

Regarding further claims, Section 9 of these Terms and Conditions 2017 shall apply.

8.4 Within the warranty period specified in clause 8.2 of these Terms and Conditions 2017, UTM shall be obliged to bear the expenses required for the purpose of rectification, unless the aforementioned expenses are increased due to the fact that the delivered item was moved to a location other than the Customer's residence or commercial branch office after delivery, insofar as such movement does not correspond to the intended use of the item.

The Customer shall be obliged to allow UTM to carry out the rectification work for the purpose of fulfilling the warranty and to send the delivery item to UTM or to a workshop to be determined by UTM on a case-by-case basis upon request. Should the Customer fail to comply with this obligation, UTM shall be released from any warranty.

8.5 The warranty cannot be based on defects caused by interventions of the customer or third parties; it shall not apply if the delivery item has not been stored, handled, or maintained in accordance with the enclosed conditions.

Furthermore, the warranty does not extend to natural wear and tear.

8.6 If UTM provides a warranty, the warranty period shall be suspended for the period during which the Customer is unable to use the delivery item due to UTM's activities.

8.7 For used delivery items, any warranty claims including any claims for repair or replacement are excluded.

9. other liability

Contractual and non-contractual claims against UTM and its vicarious agents for compensation for damages of any kind, including damages that did not occur to the delivered goods themselves, are excluded.

In the case of consultancy contracts, neither the client nor the consultant is liable to each other for consequential damages.

This exclusion of liability does not apply in the case of intent or gross negligence on the part of UTM, a legal representative and their vicarious agents, or in cases where liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivered goods. This also applies to damages resulting from the violation of obligations during the contract negotiations.

It also does not apply in the absence of characteristics that are expressly warranted if the warranty was specifically intended to protect the customer against damage that did not occur to the delivery item itself.

10. copyright

UTM reserves the unlimited right of ownership and copyright exploitation of drawings, technical documents, and other know-how information; they may not be made accessible to third parties.

11. consulting contracts

11.1 In connection with the provision of consulting services, UTM undertakes not to make internal company information and data available to third parties or to forward such information and data to third parties.

11.2 Confirmed consultancy appointments are in all cases subject to the correct and timely provision of the necessary information and data. Appointment commitments shall commence upon receipt of our consultancy contract, but in no case before clarification of all details of the consultancy performance and provision of any necessary information/data by the customer. Completion dates for consulting shall be extended by the period by which the Customer is in default of its obligations to UTM.

12. acceptance conditions for dangerous goods

Deliveries to which a hazardous goods regulation (e.g. *GGVSEB*, *GGBeFG*, *ADR*) applies must be declared and packed in accordance with the legal regulations. All deliveries of dangerous goods must be coordinated with our disposition.

13. data protection

In accordance with § 26 of the Federal Data Protection Act and DSGVO Art. 6 para. 1 lit. b) UTM draws attention to the fact that customer data received in connection with the business relationship is only processed and stored for UTM's own purposes.

14. safety regulations

Attention is drawn to the observance of the relevant safety regulations, such as the technical rules for compressed gases or the accident prevention regulations.

If, in the case of deliveries abroad, safety regulations exist in the customer's country, in particular for the approval, maintenance and handling of the delivery items, the customer alone is obliged to comply with these. The Customer is obliged to indemnify UTM from all claims arising from such regulations.

15 Place of jurisdiction and applicable law

15.1 The place of jurisdiction is Lübeck if the customer is a merchant (but not a merchant according to § 4 HGB), a legal entity under public law or a special fund under public law. However, in these cases, UTM is entitled, at its discretion, to also bring an action before the court having jurisdiction over the customer's place of residence.

15.2 The law of the Federal Republic of Germany shall apply. The application of the Hague Uniform Laws on the International Sale of Goods and the United Nations Convention on Contracts for the International Sale of Goods is excluded.

16. final provisions

Deviations from the above terms and conditions of business must be confirmed by UTM in writing and with a legally valid signature to be valid. Customer terms and conditions that deviate from the above provisions shall only be binding if UTM has expressly accepted them in writing.

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