

# General Terms and Conditions of Sale of Indra Recycling GmbH

## 1. Scope

- 1.1 These General Terms and Conditions ("T&Cs") shall apply for all purchase contracts which INDRA Recycling GmbH, Hockenheim, ("INDRA") as seller may conclude with entrepreneurs within the meaning of section 14 of the German Civil Code (BGB) ("Purchaser"). These General Terms and Conditions will not apply vis-à-vis consumers within the meaning of section 13 BGB.
- 1.2 The validity of any T&Cs of the Purchaser is expressly rejected. This shall apply even if INDRA perform delivery to the Purchaser without reservation in awareness of conflicting T&Cs of the Purchaser.
- 1.3 Deviations from these terms shall only be effective if INDRA confirms as such in writing.
- 1.4 These T&Cs are supplemented by the "Practices and Classifications of the Metal Trade" ("Usancen und Klassifizierungen des Metallhandels") published by Verein Deutscher Metallhändler e.V. and INCOTERMS as amended. Both sets of clauses will be sent to the Purchaser on request.
- 1.5 Notwithstanding the renewed inclusion of amended T&Cs of INDRA, these T&Cs shall also underlie future sales of INDRA to the Purchaser without their renewed inclusion being required.

## 2. Conclusion of Contract

- 2.1 Offers of INDRA are subject to confirmation unless otherwise indicated by the circumstances. If a purchase order of the Purchaser is to be classified as an offer pursuant to section 145 BGB, INDRA may accept this offer within 2 weeks.
- 2.2 The Purchaser may only rely on the legal effectiveness of agreements reached with employees without power of representation registered on the commercial register if such agreements are confirmed in writing by an authorised representative registered in the commercial register.
- 2.3 If, after accepting the order, we become aware of facts causing legitimate doubt as to the solvency of the customer, we shall have the right to demand payment in full or the furnishing of corresponding securities before delivery or, if a deadline has been set and elapsed without result, to withdraw from the contract, reserving all rights such

as compensation in damages. In addition to any delay in payment that has already occurred, a reduction in the credit limit of the customer with our export credit insurer or any notification issued – exercising due commercial care – by a bank, credit agency, enterprise in a business relationship with the customer or similar shall be regarded as evidence of a material deterioration in net worth. If delivery has already been made, the invoiced amounts in question shall immediately become due for payment contemporaneously with the return of securities, bills of exchange, etc., regardless of any agreed payment terms.

- 2.4 NF metals are secondary raw materials. Their purity in relation to quality and material is limited to the possibility of material sorting by appearance and origin, which is done with the care customary in the industry. It is not possible to guarantee the type or alloy purity. More extensive claims based on quality are excluded.

## 3. Prices

- 3.1 Unless otherwise agreed, our prices apply net (excluding VAT) "ex works". They are based on the freight tariffs applicable at this time. The addition of or increase in public charges and – in the case of delivery carriage paid – an increase in freight costs shall bring about a corresponding increase in the contract price. If delivery carriage paid is agreed, the agreed price shall only apply if normal transport is unhindered.
- 3.2 All taxes and other charges arising for goods and services in the receiving country shall be borne by the Purchaser.

## 4. Payment Modalities

- 4.1 The Purchaser shall settle INDRA's payment claims immediately and without deduction. The place of performance is Hockenheim. In the event of failure to settle a payment claim, the Purchaser will be in default of payment within not later than 14 days of the due date and receipt of an invoice or equivalent request for payment.
- 4.2 The Purchaser will only have rights of set-off and retention if its counterclaims are declared legally valid, are undisputed or have been recognised by INDRA.

## 5. Delivery Modalities

- 5.1 Unless otherwise agreed, deliveries will be made "ex works" INDRA.
- 5.2 The observance of agreed delivery periods presupposes due and timely fulfilment of the Purchaser's duties of cooperation.
- 5.3 INDRA will not be liable for delays in delivery and performance due to force majeure or due to events which, through no fault of its own or that may be attributed to it, make it significantly more difficult or impossible for INDRA to deliver, such as the subsequent occurrence of difficulties in procuring materials, business interruptions, strikes, lock-outs, official orders, etc., even if they occur at suppliers of INDRA or their sub-suppliers, provided that INDRA is not responsible for these circumstances. They shall entitle INDRA to postpone the delivery or performance by the duration of the hindrance plus a reasonable start-up period.
- 5.4 If INDRA has concluded a specific cover transaction for a contract item and the contract item is not supplied by the upstream supplier in accordance with the contract, INDRA will inform the Purchaser of this without undue delay. In this case the delivery period agreed with the Purchaser shall be extended if INDRA is not responsible for the delay in delivery by the upstream supplier. The agreed delivery period shall further be extended by the duration of a temporary impediment to performance that is not the fault of INDRA and cannot be overcome at reasonable expense, such as in particular the case of a labour dispute, a loss of raw materials and supplies that INDRA could not have foreseen or the shutdown of plant and machinery.  
  
Other rights of the Purchaser to a solution notwithstanding, it will be entitled to withdraw from the contract if the duration of the impediment to performance exceeds a period of one month. INDRA shall have the same right if the impediment to performance is not the fault of INDRA.
- 5.5 In the absence of agreements to the contrary, INDRA shall have the right to make partial deliveries and partial performances.
- 5.6 Transport and all other packaging pursuant to packaging regulations with the exception of pallets will not be taken back. The customer will be obliged to dispose of the packaging at its own expense.

5.7 If delivery "ex works" is not agreed, INDRA will choose the means of transport and method of shipment.

## 6. Warranty

6.1 Excess or short deliveries on agreed weights or types shall be permitted at up to 1% in the case of specific indications of quantity and up to 5% in the case of approximate indications of quantity.

6.2 Deliveries must be inspected by the Purchaser, or by the recipient determined by the Purchaser, without undue delay following receipt. Any subsequent complaint regarding the external condition of the delivery shall be excluded after the goods have been accepted without reservation by the Purchaser or a person instructed by it. To the extent that they are identifiable, notice of other defects in the goods can only be given in writing within 3 working days of receipt, otherwise only within 3 working days of discovery. The goods will otherwise be deemed approved having regard to the defect. The same shall apply if the Purchaser does not enable us to inspect the defect properly without undue delay after our request to do so.

6.3 Notwithstanding the Purchaser's claims to compensation subject to the requirements of section 7, in the case of defects notified in time which impair the value or fitness for use more than inconsiderably INDRA will first remedy the matter through subsequent performance or through a reduction in the agreed purchase price. In the case of subsequent performance, the Purchaser will not have the right to withdraw or demand a reduction until after a second failure. Subsequent performance will be made solely in fulfilment of the warranty obligations for the original goods. Notwithstanding the Purchaser's warranty rights in relation to the first delivery, therefore, in the case of deficient subsequent performance no warranty rights will be created for the subsequent performance and the warranty period will not commence again.

6.4 With the exception of the Purchaser's claims to compensation subject to the requirements of section 7, the warranty period shall be 12 months if the delivery of deficient goods does not constitute a wilful breach of duty.

## 7. Liability

7.1 The liability of INDRA shall in principle be limited to losses which IN-

DRA or its vicarious agents have caused intentionally or through gross negligence. INDRA will only be liable for slight negligence in the case of loss of life, physical injury or damage to health and in the case of an infringement of duties that are of material importance for fulfilment of the purpose of the contract.

7.2 If INDRA is liable for slightly negligent breaches of duty, INDRA's liability shall be limited in amount to the losses typical for contracts of the kind in question that were foreseeable at the time the contract was concluded or not later than when the breach of duty was committed. This will not apply in the case of loss of life, physical injury or damage to health. The Purchaser's claims to compensation for delay by INDRA shall be limited in amount to a sum of 0.5% of the agreed net remuneration for each commenced week of delay, but not more in total than 5% of the agreed net remuneration, to the extent that INDRA is not charged with gross negligence or intent.

7.3 The clauses in paragraphs (1) and (2) are without prejudice to claims to compensation which do not require culpability in law.

## 8. Reservation of Title

8.1 All deliveries are made subject to reservation of title. The delivered goods shall remain the property of INDRA until such time as the purchase price has been paid in full. INDRA further reserves title to the delivered goods until such time as all claims arising from the business relationship with the Purchaser that were already established at the time the contract was concluded ("Present Claims") have been satisfied in full and all further claims of INDRA against the Purchaser that were established before the Present Claims arising from the business relationship ("Total Claim") have been satisfied in full.

8.2 The Purchaser shall be obliged to store the reserved goods separately and to insure them appropriately against all usual risks. The Purchaser hereby assigns all claims against the insurers to INDRA.

8.3 The Purchaser is revocably permitted to process or to sell the delivered goods in the ordinary course of business in accordance with the following clauses.

If the reserved goods are processed into a new movable item, the processing shall always be for

INDRA without any obligations on INDRA being thereby established, and the new item shall become the property of INDRA. If the reserved goods are processed with other items not belonging to INDRA, INDRA shall acquire joint title to the new item in the proportion of the value of the reserved goods to the other processed items. In all other respects the same shall apply for the new movable item created by processing as for purchased items delivered under reservation.

If the reserved goods are inseparably mixed with other items not belonging to INDRA, INDRA shall acquire joint title to the new item in the proportion of the value of the reserved goods to the other mixed items at the time of mixing. If the mixing is performed in such a way that the Purchaser's item is to be regarded as the main item, it shall be deemed agreed that the Purchaser assigns joint title to INDRA pro rata. The Purchaser shall preserve the items in the ownership or joint ownership of INDRA free of charge.

For the case that the reserved goods are sold, the Purchaser hereby assigns the claims established for it from the sale in the amount of the invoice sum total including VAT, regardless of whether the delivered goods were sold before or after processing. INDRA hereby accepts the assignments. If the sold reserved goods are in the joint ownership of INDRA, the assignment of the claim is limited to the amount corresponding to the pro rata value of the joint ownership of INDRA. If the Purchaser is unable to make an assignment conforming to the above clause, in particular because of prior assignments to third parties, the sale will not be within the ordinary course of business within the meaning of this provision.

The Purchaser will have the right to collect the claims assigned to us until we revoke this right. This shall be without prejudice to our authority to collect the claim ourselves. However, we undertake not to collect the claim for as long as the Purchaser discharges its payment obligations from the collected proceeds and is not in default of payment, and in particular no petition for the opening of insolvency proceedings has been filed and payments have not been suspended. If this is the case, however, we may demand that the Purchaser disclose details of the assigned claims and their debtors to us, provide all

the information required for collection, deliver the relevant documents and inform the debtors (third parties) of the assignment. We are authorised to notify the debtor of the assignment ourselves.

8.4 The Purchaser shall notify us without undue delay of enforcement measures or other seizures by third parties in the reserved goods or assigned claims, delivering the documents necessary for any proceedings. If the third party is unable to recompense us for the in-court and out-of-court expenses, the Purchaser shall be liable to us for the resulting shortfall.

8.5 The right to sell, use or install the reserved goods and the authority to collect the assigned claims shall lapse upon the suspension of payments, the application for or the opening of insolvency proceedings or out-of-court composition proceedings; in the case of a notice of protest in respect of a cheque or bill, the authority to collect shall likewise lapse.

8.6 INDRA will be obliged to release the securities of its choice due to it to the extent that their estimated value is above 150 per cent of the total of the outstanding claims.

## 9. Payments

9.1 Unless otherwise agreed, the payment claims of INDRA shall be payable without deduction immediately after the agreed service has been performed and the invoice has been received. In the case that partial services are performed, INDRA shall have the right to invoice the Purchaser for this partial service also.

9.2 If a payment term is agreed, the delivery date shall be the key date

for calculating it and any interest. Each purchase order shall be considered a transaction in itself in respect of payment.

9.3 INDRA shall have the right to credit payments in accordance with section 366 (2) of the German Civil Code (BGB) despite differently worded provisions of the customer. If costs or interest have already accrued, INDRA shall have the right to credit the payments first to the costs, then to the interest and finally to the principal (section 367 (1) BGB).

9.4 Payment will not be deemed made until INDRA can dispose of the amount. In the case of cheques, payment will not be deemed made until the cheque has been redeemed finally and without reservation.

9.5 Payment by bill of exchange shall require the express prior consent of INDRA. All bill charges shall be borne by the Purchaser. The acceptance of bills of exchange shall not imply deferral of the underlying claim.

9.6 Cash payments will only have discharging effect vis-à-vis INDRA to the extent that they are made to persons who have written authority to collect.

9.7 If the customer enters into default, INDRA shall have the right to demand interest at 8 percentage points above the respective base rate from when the conditions for default occurred. The right to assert a greater loss is reserved.

9.8 If the customer does not meet its payment obligations, in particular if a cheque cannot be redeemed, it suspends its payments, a bill of exchange is subject to protest or

INDRA becomes aware of other circumstances casting doubt on the creditworthiness of the customer, INDRA shall have the right to call in the entire remaining debt even if it has accepted (further) cheques. In this case INDRA shall also have the right to demand that the customer furnish appropriate security (e.g. in the form of a bank guarantee).

9.9 Set-off is only permitted by mutual consent and with prior written agreement. INDRA shall further have the right to assign the claims arising from the agreed business relationships.

## 10. Choice of Law

All legal relations between INDRA and the Purchaser arising from or in connection with this contract shall be governed by the law of the Federal Republic of Germany, excluding the UN Sales Convention.

## 11. Place of Jurisdiction

The place of jurisdiction for all legal disputes between INDRA and the Purchaser arising from or in connection with this contract is the court competent for Hockenheim or, at INDRA's choosing, a general or particular jurisdiction of the Purchaser if it is a merchant and section 40 of the German Code of Civil Procedure (ZPO) does not apply.

## 12. Final Clauses

Should a clause in these terms or within other agreements be or become ineffective, this shall be without prejudice to the effectiveness of all other clauses or agreements. Ineffective clauses shall be replaced by those coming closest to the economic purpose intended by the clause.

# General Terms and Conditions of Purchase of Indra Recycling GmbH

## 1. Scope

- 1.1 These General Terms and Conditions ("T&Cs") shall apply for all purchase contracts which Indra Recycling GmbH, Hockenheim, ("INDRA") as purchaser may conclude with entrepreneurs within the meaning of section 14 of the German Civil Code (BGB) ("Supplier"). These General Terms and Conditions will not apply vis-à-vis consumers within the meaning of section 13 BGB.
- 1.2 The validity of any T&Cs of the Supplier is expressly rejected. This shall apply even if INDRA accepts services of the Supplier without reservation in awareness of conflicting T&Cs of the Supplier.
- 1.3 These T&Cs are supplemented by the "Practices and Classifications of the Metal Trade" ("Usancen und Klassifizierungen des Metallhandels") published by Verein Deutscher Metallhändler e.V. and INCOTERMS as amended. Both sets of clauses will be sent to the Supplier on request.
- 1.4 Notwithstanding the renewed inclusion of amended T&Cs of INDRA, these T&Cs shall also underlie future purchases of INDRA from the Supplier without their renewed inclusion being required.

## 2. Conclusion of Contract

- 2.1 Purchase orders of INDRA are subject to confirmation unless otherwise indicated by the circumstances. If an offer of the Supplier is to be classified as an offer pursuant to section 145 BGB, INDRA may accept this offer within 2 weeks. Amendments or additions or the cancellation of a contract or of these terms shall not be effective until confirmed by us in writing. Declarations and notifications of the Supplier after conclusion of the contract shall only be effective if made in writing.
- 2.2 The Supplier may only rely on the legal effectiveness of agreements reached with employees without power of representation registered on the commercial register if such agreements are confirmed in writing by an authorised representative registered in the commercial register.

## 3. Prices

Unless otherwise agreed, the prices agreed between INDRA and the Supplier are based on weights and materials. The prevailing weights shall be those determined by IN-

DRA by full and unladen weighing of the truck in the plant and the acceptance report ("Werksbefund"). INDRA shall be allowed a reasonable period of time pursuant to the "Practices and Classifications of the Metal Trade" in which to prepare the acceptance report.

## 4. Payment Modalities

- 4.1 The place of performance for payments by INDRA is Hockenheim. In the case that the goods supplied are processed by INDRA, payment will be made 14 days after the conclusion of processing. Otherwise payment will be made by the 20th of the month following receipt of the goods by INDRA.
- 4.2 Payments will be made by sending crossed cheques or by transfer to a bank or post office account, whichever INDRA chooses. The timeliness of payment shall be governed by the postmark or date of transfer.

## 5. Delivery Modalities

- 5.1 Unless otherwise agreed, deliveries shall be made free works INDRA Hockenheim.
- 5.2 The delivery period indicated in our purchase order shall be binding. Observance of the delivery date shall be governed by the date on which the goods are received at the destination.
- 5.3 The precise type designation, the address of the principal supplier, that of any sub-suppliers, as the case may be, the delivery weight and the precise receiving point must be indicated on all shipping documents (e.g. bill of lading, waybill, delivery note and consignment note). If no metal type is specified on the shipping documents, our classification of the metal type shall be binding.
- 5.4 The Supplier shall be obliged to notify INDRA in writing without undue delay if circumstances arise or it becomes aware of circumstances indicating that the agreed delivery period cannot be met.
- 5.5 In the case of late delivery, INDRA shall have the right to charge a contract penalty of one per cent of the total net order value, but overall not more than 10% of the total net order value, for each commenced week of delay in delivery.

INDRA shall also retain its statutory rights, but any contract penalty must be credited to any loss that may have arisen. In particular, INDRA shall have the right to de-

mand compensation in lieu of performance and to withdraw from the contract if a reasonable period of grace has elapsed without result.

- 5.6 Force majeure such as storms, fires, strikes or the like will release the contracting parties from their obligations to perform for the duration of the disruption and to the extent of its effect. The contracting partner will be required, within reason, to provide the required information without undue delay and to adapt their obligations to the change in circumstances in good faith. We shall be exempted from our obligation to accept some or all of the ordered delivery/service and shall to that extent have the right to withdraw from the contract if, having regard to economic aspects, we are no longer able to make use of the delivery/service on account of the delay caused by force majeure.

## 6. Warranty

The Supplier warrants that the goods supplied conform to the statutory and official requirements applicable for their distribution and use and do not infringe the rights of third parties. The statutory regulations shall apply in all other respects.

## 7. Notification of Defects

- 7.1 INDRA must give notification of differences in quantity immediately after the goods have been received at the destination. In other respects INDRA shall have the right pursuant to the "Practices and Classifications of the Metal Trade" to give notifications of defects concerning wetness and oil within three working days of receipt of the goods at the destination and other quality complaints within eight working days of receipt of the goods at the destination. In the case of goods that must be analysed, the notification period shall be extended to fifteen working days after receipt of the goods at the destination. Hidden defects must be notified without undue delay after discovery.
- 7.2 In the case of NF metals, INDRA shall be entitled to bring claims based on defects in the case of shortfalls of up to 200 kg even in the absence of express notification.
- 7.3 We may avail ourselves without restriction of all statutory claims based on defects. In particular, we shall be entitled to demand that the contracting partner remedy the defect or make substitute delivery, at

our option. In this case the contracting partner shall be liable for any costs incurred in remedying the defect or making substitute delivery. We reserve the right to demand compensation in addition to and/or in lieu of performance. The statutory limitation period for claims based on defects shall apply.

7.4. In all instances of defective performance on the part of our contracting partner, we shall be entitled, but not obliged, to remedy a defect, or to have it remedied, at the contracting partner's expense after a reasonable period set for subsequent performance has elapsed without result. We shall likewise be entitled, but not obliged, to procure from elsewhere at the contracting partner's expense a replacement for an item delivered in a defective state.

7.5 The Supplier shall perform the necessary measures and inspections to ensure that the metal fraction supplied is free of ionising radiation, explosive devices, potentially explosive objects and closed hollow bodies. The Supplier shall be liable to the full extent for damage caused by the supply of such materials. In the case of loading through sub-suppliers, the Supplier must ensure that these measures have been taken in order to ensure that the metal fraction supplied is free of explosive devices, potentially explosive objects, closed hollow bodies and ionising radiation above the measured ambient underground radiation level. If delivery is made from direct imports, the Supplier shall ensure that the contract underlying the import contains an express declaration that the metal fraction is free of explosive devices, potentially explosive objects, closed hollow bodies and ionising radiation above the measured ambient underground radiation level. The sender will be obliged to assume all costs arising as a result of the delivery of metal fractions with ionising radiation above the measured ambient underground radiation level, explosive devices, potentially explosive objects or hollow bodies. We reserve the right to bring compensation claims of our own. The Supplier shall indemnify Indra Recycling GmbH against any claims for compensation brought by third parties and all costs incurred in this connection.

7.6 With regard to the waste management activities, the contracting partner will be obliged to comply with the valid national and international legal regulations. It shall

comply with all national and international legal provisions in all other respects also.

#### **8. Liability of the Purchaser**

The liability of INDRA shall in principle be limited to losses which INDRA or its servants or vicarious agents have caused intentionally or through gross negligence. INDRA will only be liable for slight negligence in the case of loss of life, physical injury or damage to health and in the case of an infringement of duties that are of material importance for fulfilment of the purpose of the contract.

#### **9. Prohibition of Assignment**

The Supplier is not entitled to assign its claims against INDRA to third parties without the written consent of INDRA, which may only refuse consent for good cause.

#### **10. Set-off, Rights of Retention**

We shall have statutory rights of set-off and retention to the extent set out in law. Set-off is only permitted by mutual consent and with prior written agreement.

#### **11. Transfer of Title**

We shall acquire absolute title to the delivered goods upon payment for them. Further reservations of title, in particular what is known as extended reservation of title in all its forms, are excluded.

#### **12. Deficiencies in Title**

The Supplier warrants that the goods are free from any rights of third parties and that delivery of the goods does not violate any rights of third parties. The Supplier shall to that extent indemnify us upon first demand against any claims brought by third parties.

#### **13. Choice of Law**

All legal relations between INDRA and the Supplier arising from or in connection with this contract shall be governed by the law of the Federal Republic of Germany, excluding the UN Sales Convention.

#### **14. Place of Jurisdiction**

The place of jurisdiction for all legal disputes between INDRA and the Supplier arising from or in connection with this contract is the court competent for Hockenheim or, at INDRA's choosing, a general or particular jurisdiction of the Supplier if it is a merchant and section 40 of the German Code of Civil Procedure (ZPO) does not apply.

#### **15. Final Clauses**

Should a clause in these purchase terms or within other agreements be or become ineffective, this shall be without prejudice to the effectiveness of all other clauses or agreements.