

General Terms and Conditions

Loacker Recycling GmbH

As of January 2020

Part A – Preamble

1. Scope of application of the present General Terms and Conditions and of Part A

- 1.1 The present General Terms and Conditions (hereinafter referred to as “GTC”) shall apply to all contracts concluded between Loacker Recycling GmbH, Götzis as well as by all affiliated companies located in Austria (hereinafter referred to as “Loacker”) and their contractual partners.
- 1.2 If the General Terms and Conditions of the contractual partner differ from the present GTC, the terms of the contractual partner shall only apply if previously explicitly confirmed in written form by Loacker. Confirmations to the contrary issued by the contractual partner referring to his terms and conditions are hereby explicitly objected.
- 1.3 The present GTC may at any time be subject to changes by Loacker and shall also apply to existing contractual relationships, provided the contracting partner has been notified the changed terms and provided the contracting partner does not object to the changes of the GTC within 4 weeks as from the receipt of the communication of the change.
- 1.4 The present GTC shall also apply exclusively and unconditionally, if Loacker executes the order without reservation despite his knowledge about contradicting or deviating conditions of the contractual partners.
- 1.5 The regulations of the present Part A shall apply, unless diverging provisions are mentioned in the Parts B – E.

2. Consumers

- 2.1 “Consumer” is a natural person who concludes a legal transaction to purposes that may basically be allotted neither to his commercial nor to his independent work.
- 2.2 The present GTC shall also apply towards consumers. To the extent as special provisions will be concluded for consumers, these provisions shall replace the general terms.

3. Offer and acceptance of the order

- 3.1 Offers by Loacker are subject to change.
- 3.2 The contract, including other agreements and ancillary agreements, particularly when differing from the present sales and delivery terms, shall only be binding after the written confirmation by Loacker.
- 3.3 The content of the contract, particularly as regards the scope of delivery, is based on the written confirmation by Loacker, unless an oral or conclusive agreement deviating from the present General Terms and Conditions has been made after the conclusion of the contract. The modification of individual agreements is only admissible in written form even after the conclusion of the contract.
- 3.4 Loacker is not obligated to verify the power of representation of the mandating person but is entitled to assume the lawful power of representation of this person.
- 3.5 Loacker is entitled to resort to third parties in order to fulfil his duties arising from the agreements.
- 3.6 The indications mentioned by the contractual partner in the certificate of waste disposal (responsible declaration) as well as the requirements by the approving authorities are the basis for the contract and hence, an essential part of the contract.

4. Payment terms

- 4.1 Invoices from Loacker are payable without delay net as from the invoice date. Discount shall be allowed only in accordance with individual agreements. The timeliness of the payment by the contractual partner shall be the entry of the credit in the account as mentioned in the invoice.
- 4.2 In default of an explicit determination by the contractual partner, Loacker shall be entitled to set off payments by the contractual partner against older debts of the latter. Apart from that, the statutory provisions shall apply.
- 4.3 The value retention of the claim of Loacker towards the contractual partner is explicitly agreed. The calculation of the value retention shall be based on the consumer price index published monthly by Statistik Austria under the terms of the consumer protection act or an index replacing the afore mentioned index or a comparable index. The basis for the calculation applicable to the contract shall be the index published in the month of the conclusion of the contract. If Loacker does not assert any additional claim resulting from such a change of index, this shall not be deemed a waiver of such a value retention. The claims resulting from the value retention shall be forfeited after three years.

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- 4.4 In case of late payment, Loacker shall be entitled, without prejudice to other rights, to claim default interest at least in the amount of 9,2% above the basic interest; towards consumers the default interest can be in the amount of 4% above the basic interest.
- 4.5 Apart from that, the statutory provisions shall apply to the consequences of a late payment.
- 4.6 The contractual partner shall only be entitled to offset rights, if his counterclaims have been determined finally, if they are uncontested or if they are recognized or are based on the same legal relationship.
- 4.7 The contractual partner is only entitled to exercise a retention right if his counterclaim is based on the same legal relationship.
- 4.8 Loacker is entitled to assignment of his claims towards the contractual partner.
- 5. Scope of liability of Loacker**
- 5.1 Loacker has an unrestricted liability for damages caused by a violation of life, body or health, resulting from a negligent breach of duties by Loacker or from a wilful or negligent breach of duty by his lawful agent or subcontractor as well as in cases of statutory prescribed strict liability.
- 5.2 Loacker shall be held liable for other damages caused through wilful or grossly negligent violation of duties by Loacker or through wilful or grossly negligent violation of duties by his lawful agents or subcontractors. In such a case, the liability is limited to foreseeable typically occurring damages at the point in time of the conclusion of the contract.
- 5.3 Loacker shall be liable for damages resulting from wilful or gross negligence of an essential contractual duty only for any foreseeable typically occurring damages at the point in time of the conclusion of the contract. An essential duty is a duty that allows the contract concluded with the contractual partner and upon that the contractual partner has relied and was entitled to rely on and whose non-fulfilment endangers the achievement of the purpose of the contract.
- 5.4 In all the other cases such a liability of Loacker is excluded.
- 5.5 Insofar as the liability of Loacker is excluded or limited, this shall also apply to his employees, agents and subcontractors.
- 6. Prescription**
- 6.1 The mutual claims of the contractual partners are submitted to the statutory provisions as regards prescription.
- 7. Deterioration of the asset situation**
- 7.1 If, after the conclusion of the contract, the contractual partner suffers a deterioration of his asset situation, Loacker shall be entitled to execute deliveries and provisions of services only by way of security. If the contractual partner is not able to provide security within an appropriate deadline, Loacker shall be entitled to rescind the contract.
- 7.2 The same shall apply if, after the conclusion of the contract, Loacker acquires knowledge about facts, that give cause to substantiated doubts about the ability to meet financial obligations or about the creditworthiness of the contractual partner, particularly if the credit insurance of Loacker refuses to cover in full or in part the unsettled claims towards the contractual partner; this shall not apply if the contractual partner can prove that Loacker had already knowledge of these facts at the point in time when the contract was concluded or that Loacker should have known these facts acting with due care.
- 7.3 Furthermore, Loacker shall be entitled in the afore mentioned cases, due to an agreed retention of ownership, to forbid the sale and reprocessing of the supplied goods and to revoke the direct debit authorization.
- 8. Data processing/ credit assessment/transactions liable to VAT**
- 8.1 Person related data will be collected, stored and possibly transmitted by Loacker, inasmuch as this is required in order to be able to perform the contractual services. The collection, storage and transmission will be made to the purposes of fulfilment of the contract and on the basis of the provisions of art. 6 para. 1 sub-para 1 let. b General Data Protection Regulation. Default to provide such data may result in a non-conclusion of the contract. When Loacker supplies or collects items with the contractual partner, data of the customer can be transmitted to a mandated transportation company, inasmuch as these data are required for the supply or the collection of the items. A further processing of data will only be made, if you agree or if there is a statutory authorization to do so. Further information on data protection and particularly regarding the rights of persons affected can be found in the data privacy policy of Loacker at <https://www.loacker.cc/datenschutzerklaerung/>.

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- 8.2 Loacker explicitly reserves the right to enter into contracts with contractual partners only after a positive assessment of the creditworthiness of the partner and/or in the case of a negative assessment of the creditworthiness to enter into contracts only after receipt of an advance payment. To these purposes, Loacker will have the credit reference agencies Kreditschutzverband von 1870, Wagenseilgasse 7, 1120 Vienna and CRIF, Diefenbachgasse 35, 1150 Vienna, make an assessment of the credit risk in the case of orders that require preliminary work by Loacker. To this effect, the person related data that are required for an assessment of the creditworthiness, such as names and addresses will be communicated to the credit reference agency. The collection, storage and transmission of data will be made to the purposes of creditworthiness check in order to be able to prevent payment default and on the basis of the provisions of art. 6 para. 1 sub-para. 1 let. b GDPR and of art. 6 para. 1 sub-para. 1 let. f GDPR.
- 8.3 For new customers (incorporation of the companies not longer than within the last two years), Loacker shall be entitled in the case of transactions liable to VAT to have the applicable VAT transferred directly to the appropriate revenue office of the customer. The contractual partner undertakes to sign an appropriate power of attorney from Loacker. Loacker is entitled to withhold all VAT payments resulting from the contracts until an undersigned power of attorney is provided.
- 9. Place of fulfilment, legal venue and applicable law**
- 9.1 The place of fulfilment shall be the place of the registered office of Loacker.
- 9.2 If the contractual partner is a consumer, the statutory legal venue shall apply.
- 9.3 If the contractual partner is an entrepreneur under the terms of the Austrian Commercial Code, a legal entity under public law or a special fund under public law, the exclusive legal venue for all disputes resulting either directly or indirectly from the contractual relationship shall be the place of the registered office of the contractual Loacker company. Loacker shall however also be entitled to sue in the legal venue of the contractual partner.
- 9.4 In all the other cases, Loacker or the contractual partner may sue before a court having competence due to statutory regulations.
- 9.5 Austrian law shall govern to the exclusion of the UN Convention on Contracts for the International Sale of Goods. In the case of transactions with consumers, the law applicable in the place of residence of the consumer shall apply insofar as it will be less expensive as the Austrian law and Loacker performs his activities in the home country of the consumer.
- 10. Miscellaneous**
- 10.1 Where the present GTC, parts thereof or other provisions of a contract will be or become ineffective due to recent legislation, this will not affect the validity of the remaining provisions. Invalid provisions shall be replaced by new provisions that will come closest to the economic purpose of the present provisions and that will be legally effective under the new legal situation.
- 10.2 For the time being, Loacker does not participate in extrajudicial grievance and redress procedures.

Part B – Ordering of containers via the online shop

- 1. Scope of application**
- 1.1 Within the framework of the online shop created by Loacker on the website <https://shop.loacker.cc> (hereinafter referred to as the “online shop”), all orders, contracts and business transactions including ancillary services are subject to the provisions of **Part A, Part B and Part C** of the present General Terms and Conditions.
- 2. Conclusion of the contract**
- 2.1 The ordering of a container via the online shop is deemed to be an offer to Loacker for the conclusion of a contract. Through confirmation via the button “Send order” the contractual offer is transmitted to Loacker. Loacker will confirm the receipt of the contractual offer electronically without delay. Until the transfer of the contractual offer, possible entry errors may be corrected through the use of the Back button. The contractual text including the present GTC will be memorised.
- 2.2 The delivery delays displayed in the online shop will only serve as a guideline and can be submitted to changes.

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3. Pricing, terms of payment, taxes

- 3.1 In general, the prices as indicated by Loacker are based on stock market prices that are submitted to constant changes. Unless a fixed price has explicitly been agreed and not more than two months have passed since the conclusion of the contract, the day of receipt of the material in the plants of Loacker shall be decisive for the determination of the final price. Loacker undertakes towards customers, who are consumers to consider increases in price as well as reductions of price up to the actual extent.
- 3.2 The weighing upon which will be based the final price will be made by Loacker on scales and weighing devices provided by Loacker. The weight as mentioned by Loacker in the weighing slip issued by Loacker shall be decisive for the calculation of the price.

4. Installation site / entry and exit roads

- 4.1 The customer is entitled to communicate via the online shop an installation site for the lease container provided by Loacker. Loacker will endeavour to install the lease containers in the determined site, reserves however explicitly deviations from the place of installation, for instance due to the spatial conditions in the selected site. The provisions of Part C, clause 3 shall also apply.

5. Specific provisions for consumer transactions

- 5.1 Customers who are consumers, shall be entitled to rescind the contract without giving reasons within 14 days after the conclusion of the contract. The time limit for the rescission from the contract shall commence with the day of the conclusion of the contract.
- 5.2 The right to rescission may be exercised through using the attached withdrawal form, however the declaration of rescission is not bound to any specific form.
- 5.3 In the event of a rescission in accordance with the provisions of clause 5 of the present contract, Loacker will refund to the consumer within 14 days as from the receipt of the declaration of rescission all payments effected. The repayment will be settled using the same means of payment as the consumer has used when making his payment.
- 5.4 In the case of a withdrawal from the contract, the customer undertakes to hold the lease container provided by Loacker ready for collection. The customer commits himself to refund to Loacker the actually accrued costs in the case of his withdrawal from the contract.

6. Notice of defects, claims for compensation

- 6.1 Customers, who are not consumers must notify defects in written form within one week. Loacker is entitled at his discretion, to rectify the defects, to deliver missing items or to offer a price reduction. If the customer does not meet his duty to notify the defect in due time, all warranty claims, as well as claims for compensation and the right to challenge the contract shall be forfeited.
- 6.2 Loacker excludes the liability for property damages and financial losses caused through slight negligence. Loacker's obligation to indemnify the customer shall be limited to an amount of € 100,000.00 unless otherwise provided for in individual cases. Loacker explicitly excludes the liability for loss of profits.

Part C – Disposal; provision of refuse containers, office and storage containers as well as sanitary containers and mobile sanitary systems

1. Scope of services

- 1.1 Loacker assumes for the contractual partner the services as mentioned in the confirmation of order. Depending on the type of agreed services, the scope of services comprises:
 - a) The provision of receptacles and/or containers, mobile sanitation systems or crowd barriers (hereinafter referred to collectively as "lease objects") of the type, size and quantity as specified in the contract;
 - b) The delivery and collection of the lease objects as well as their setting up in the agreed site;

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- c) The exchange and/or discharging as well as the removal of provided refuse containers and/or basic material (hereinafter referred to collectively as “**material**”) in the agreed location and transportation of the material to the recycling or destruction facility;
 - d) The proper recovery in conformity with the law of the material specified in the contract and/or the destruction of the waste materials.
- 1.2 If the contractually agreed service provided by Loacker is not admissible anymore as previously practiced due to any changes of statutory regulations, Loacker must ensure the disposal and/or destruction in accordance with the changed regulations. Any possibly accruing incremental costs must be borne by the contractual partner.
 - 1.3 Prices and leases are based on the respective offers by Loacker communicated in written form (either by letter or by e-mail), that have been previously sent to the customer.
 - 1.4 In the course of the destruction of waste materials Loacker will only issue a certificate of destruction if the contractual partner has requested such a certificate previously in written form (either by letter or by e-mail).

2. Time of service provision

- 2.1. In general, services are provided at the agreed date.
- 2.2. The agreed sequence and/or phases of service provisions are binding; downtimes and waiting periods not caused by Loacker as well as futile journeys are chargeable and will be invoiced at the hourly rates for the ordered services.
- 2.3. In case of call orders, the call for services must be in written form unless otherwise agreed.

3. Duties of the contractual partner regarding the delivery and setting up of the lease objects

- 3.1. The contractual partner is responsible for the creation of the conditions that will ensure a proper provision of the services in conformity with the law.
- 3.2. The contractual partner will assume the liability for the determination of the location of the lease objects, particularly for a reinforced foundation and he will ensure the free access for the setting up and the removal of the lease objects.
- 3.3. The contractual partner will inform Loacker in due time prior to the journey on the road conditions unless the road is obviously appropriate for the circulation of lorries. If the contractual partner omits this information, Loacker will not be held liable for any damages that might be caused by the lorries or by the non-navigability of the road (e.g. lateness, impossibility), possible damages must be borne by the contractual partner.
- 3.4. The contractual partner will assume the legal duty to implement safety precautions regarding the lease objects. All necessary administrative approvals for the use of public circulation areas must be obtained by the contractual partner at his own expense prior to the setting up of the containers.
- 3.5. The contractual partner undertakes to previously obtain the consent of the owner or other beneficiaries of the projected location site for the setting up of the lease object.
- 3.6. The contractual partner shall not be authorized to rearrange and/or displace autonomously the containers or have the containers moved by third parties that have not been explicitly mandated by Loacker or to leave the containers to removal by such third parties.
- 3.7. The contractual partner shall solely be held responsible for failure to secure the containers or for missing approvals by the authorities, owners or beneficiaries. In this respect, he will hold Loacker harmless against claims by third parties.

4. Customer's duty of notification

- 4.1. All and any operational changes that might have an impact on the removal of the material or the lease objects, must be communicated without delay to Loacker in written form.
- 4.2. Administrative orders that might have an impact on the contractual services must be communicated without delay in written form. In the event of a breach of the obligation to notify Loacker, the contractual partner shall be held responsible for all and any costs and expenses resulting from this breach.

5. Terms of use for the lease objects

- 5.1. Loacker supplies the receptacles/containers required for the disposal of refuse by way of lease.
- 5.2. The provision of waste receptacles, office and storage containers, sanitary containers, mobile sanitation systems and crowd barriers results from a lease contract based on the offer by Loacker.

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- 5.3. The lease objects are the propriety of Loacker. Symbols of ownership must not be removed.
- 5.4. The contractual partner undertakes to treat the lease objects and possible appurtenant devices and equipment carefully. Within the scope of the contractual use of the lease objects, the contractual partner must practice outmost consideration.
- 5.5. The contractual partner will assume the responsibility towards Loacker for any damages or losses of a lease object, as well as of the appurtenant devices and equipment, that have possibly be caused by himself, by persons employed by him or persons and visitors who use the lease objects with his consent, to the extent he is answerable for same. The contractual partner must bear the burden of proof that the damages were not caused through culpable conduct, provided the lease object, its appurtenant devices and equipment were entrusted to his care. The contractual partner will not be held responsible in case of unforeseeable circumstances and force majeure.
- 6. Charges**
- 6.1 Possible charges and contributions as well as taxes, customs and excise dues that become due on the basis of the lease contract, the possession or the use of the lease object, must be borne by the leaseholder.
- 7 Ownership of the goods / material to be recycled, destroyed or disposed of**
- 7.1 The contractual partner warrants and confirms towards Loacker that all and any goods, material, refuse, waste and other substances (hereinafter referred to as "material") that he sells or hands over to Loacker have been legally acquired, that the contractual partner is the legal owner of this material or that the good is under his exclusive power of disposition.
- 7.2 The contractual partner must declare the material completely and correctly. Exclusively the material mentioned in the respective declaration must be filled in the appropriate receptacles. Changes of the composition of the material must be notified without delay to Loacker.
- 7.3 When handed over, the material will be stored in a collection container, in another collection vessel or, when loaded, in a collection vehicle and as from that point in time will pass into the ownership of Loacker. This does not include hazardous waste and the waste or material non-conforming with the declaration. The latter can be refused by Loacker. If however, such waste has already been accepted, the contractual partner must take back the wrongly declared material. If he refuses to take such material back, Loacker shall be entitled to dispose of this waste and to claim indemnification.
- 8. Confirmation of provision of service, burden of proof of proper disposal**
- 8.1 On request, the contractual partner must confirm towards Loacker the provision of services as set out in the contract.
- 8.2 To the extent as there is a duty to provide evidence on the proper disposal, the contractual partner must produce the evidence using to these purposes the forms provided by Loacker or issued in the course of the electronic waste records procedure. If the contractual partner does not meet his obligation to provide proof of disposal – also by means of an agent – at the point of time of the disposal, Loacker is not obligated to execute the disposal.
- 8.3 The duties assumed by Loacker will not relieve the contractual partner from his responsibility under the waste law.
- 9. Interruptions of operations**
- 9.1 Interruptions of operations with Loacker, that might impede Loacker through no fault of his own to supply the contractual item within the agreed period of time (e.g. due to force majeure, vandalism, etc.) will extend the delivery deadlines and terms by the duration of the impediment and the period of time required for restart.
- 9.2 Possible claims for indemnification by the purchaser based on a late delivery will only be accepted in case of gross negligence by Loacker.
- 10. Deficiencies in performance during disposal**
- 10.1 The contractual partner must notify Loacker regarding any deficiencies in disposal within 48 hours.
- 10.2 The contractual partner must bear the burden of proof regarding non provided services or services that were not properly provided.

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Part D – Acquisition of scrap iron, non-ferrous metals and material

1. Conclusion of contract, price

- 1.1 The offer of the contractual partner, who is not a consumer, shall be binding.
- 1.2 All prices are to be understood inclusive of the statutory value added tax; except for entrepreneurs provided the value added tax is itemized separately.
- 1.3 If, at delivery, it is found that the supplied material is of a different nature or quality as specified by the contractual partner, the contract will be adapted to these deviances.

2. Measures, weights and rounding rules

- 2.1 Measure and weight deviations that will not exceed the framework of usual tolerances granted, of relevant DIN standards and that might be due to the casting process, shall be admissible.
- 2.2 The content of chemical elements is commercially rounded to the last digit specified.

3. Delivery time and delayed delivery

- 3.1 The delivery period as agreed with Loacker shall be binding. The contractual partner is obligated to immediately notify Loacker in written form if agreed delivery times – for any reason whatsoever – will probably not be kept.
- 3.2 If the contractual partner does not provide the services or does not punctually provide the services or will be late in the performance of the services, the rights of Loacker will be determined by the statutory provisions- particularly as regards rescission of the contract and indemnification.
- 3.3 If the contractual partner is in default with his obligations, Loacker may claim – beside further statutory claims – a flat compensation of the damages caused by the delay up to the amount of 1% of the net price per completed calendar week, however, in total not more than 5% of the net price of the goods delivered late. Loacker reserves the proof of evidence that Loacker has incurred a higher loss. The contractual partner reserves the proof of evidence that Loacker has incurred no loss or a substantially lower loss.

4. Transfer of risk, default of acceptance

- 4.1 Delivery shall be made free of charge to the respective location of Loacker, unless otherwise provided in individual cases. The place of destination shall also be the place of fulfilment (debt to be discharged at creditor's domicile).
- 4.2 For the supply of scrap, metal and material, the prices will be calculated on the basis of the weight delivered as determined by Loacker.
- 4.3 The delivery must be accompanied by a delivery note from Loacker mentioning the date (date of issue and date of delivery), content of the shipment (article number/variety number/key number and quantity) as well as the order identification (date and number). If the delivery note is missing or incomplete, Loacker shall not be held responsible for any resulting delays in processing and payment. Beside the delivery note, Loacker must also receive an appropriate shipping advice with the same content.
- 4.4 The risk of an accidental loss and deterioration of the goods passes to Loacker with the handing over in the place of destination.
- 4.5 In case of a late acceptance, the statutory provisions shall apply. If Loacker is in default of acceptance, the contractual partner may in accordance with the applicable legal provisions claim compensation for his additional costs.

5. Prices and terms of payment

- 5.1 Unless otherwise provided for in individual cases, the price includes all ancillary costs (e.g. proper packaging, transportation costs inclusive of possible shipment and liability insurance). On request by Loacker, the contractual partner must take back the packaging material.
- 5.2 The agreed price becomes due for payment within 30 calendar days as from complete delivery and service (incl. a possibly agreed acceptance) as well as from access to a proper invoice.
- 5.3 Loacker does not pay any late payment interest. The late payment interest rate is 1% above the respective statutory basic interest rate. In case of a late payment, the statutory provisions shall apply or otherwise a written reminder by the contractual partner shall be required in any individual case.

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- 5.4 Loacker shall be entitled up to the statutory extent to the rights of offsetting and retention as well as to the plea of non-performance. In particular, Loacker shall be entitled to retain due payments as long as his claims for incomplete or defective services towards the contractual partner are unsettled.
- 5.5 The contractual partner has a right to setting off or retention only towards legally valid and uncontested counterclaims as well as towards claims that are based on the same legal relationship.
- 6. Retention of title**
 - 6.1 Inasmuch as the contractual partner supplies the goods only under retention of title, this retention of title of the contractual partner will expire at the latest upon payment of the purchase price for the goods supplies.
 - 6.2 In the orderly course of business, Loacker shall be authorized to resell the goods even prior to payment of the purchase price with anticipatory assignment of the resulting claim (alternatively, application of ordinary reservation of title with extension to resale).
 - 6.3 At any rate, all other forms of reservation of title are thereby excluded, specifically the expanded or forwarded reservation of title and the reservation of title extended to cover further processing.
- 7. Defective delivery**
 - 7.1 The statutory prescriptions shall be applicable to the rights of Loacker in case of material defects and defects of title in the goods and in case of other breach of duty, unless otherwise provided in the following.
 - 7.2 Under the legal provisions the contractual partner shall be held liable in particular that the material conforms to the agreed quality at the time of transfer of risk. At any rate, the descriptions that are the object of the respective contract or that have been included in the same way as the present GTC into the contract, - particularly through the designation or reference in the order of Loacker – are considered as the agreement on the quality of the material. There is no difference whether the description originates from Loacker or from the contractual partner.
 - 7.3 Inspection duties and duties to give notice of defects (art. 377 Austrian commercial code or comparable standards) shall not apply to Loacker and are explicitly excluded.
 - 7.4 If the contractual partner does not meet his obligation to supplementary performance – at the discretion of Loacker either through elimination of the defect (rectification) or through supply of a defect-free item (compensation delivery) – within an appropriate term set by Loacker, the latter is entitled to remedy the defect himself and may claim compensation of the ensuing expenses and/or an appropriate advance payment from the contractual partner. If the subsequent performance by the contractual partner is fruitless or unreasonable for Loacker (for instance due to particular urgency, endangerment of the operational safety or threatening occurrence of disproportionate damage) there will be no deadline; in case of such events, Loacker will notify the contractual partner without delay, if possible in advance.
 - 7.5 Apart from that, Loacker is entitled to grant a reduction of the purchase price or to rescind the contract due to defects of quality or title in conformity with the statutory provisions. Moreover, Loacker is entitled to claims for damages and reimbursement of expenses in accordance with the statutory provisions.
- 8. Exemption from explosive devices, exemption from ionising radiation**
 - 8.1 The contractual partner warrants and confirms that he will supply exclusively scraps that are exempt from explosive devices, ionising radiation (radioactivity) and objects that might give rise to the suspicion of being explosive and he will also warrant and confirm that no closed hollow bodies are contained. The contractual partner undertakes to inspect the scraps prior to delivery. If the contractual partner has a subcontractor, the contractual partner will transfer the afore mentioned obligations to his subcontractors.
 - 8.2 To this effect, the contractual partner must sign the form “Declaration on the exemption of explosive devices and exemption from ionising radiation” and must transmit this declaration to Loacker.
 - 8.3 If explosive devices, ionising radiation are detected in particles, in objects that might give rise to the suspicion of being explosive and/or in closed hollow bodies, Loacker shall be authorized to refuse the acceptance and to inform the competent authorities, companies specialised in the dismantling of hazardous material as well as the contractual partner without delay. All and any costs ensuing from the refusal of acceptance and the disposal must be borne by the contractual partner who must entirely indemnify Loacker and hold him harmless.

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Part E – Sale of iron scrap, non-ferrous metals as well as material

1. Scope of application

- 1.1 The present Part E is not applicable towards consumers. In case of sales to consumers, the statutory provisions will apply, unless Part A provides for specific regulations.

2. Prices, shipment and packaging costs

- 2.1 Prices are based on the offer by Loacker – unless there is a deviating agreement.
- 2.2 Calculation of the price is based on the delivery weight as determined by Loacker.

3. Delivery times, non-availability of the services and delay in performance

- 3.1 An agreed delivery period shall start to run as from the day of Loacker's dispatch of the confirmation of order, however at the earliest at the point in time, when all details of the performance of the order to be agreed upon with the contractual partner have been clarified and all other requirements to be fulfilled by the contractual partner have been met.
- 3.2 An agreed delivery time will be postponed if the contractual partner has not met in due time the requirements to be fulfilled by him. If the contractual partner is in default, this will not affect the rights of Loacker.
- 3.3 The delivery time is deemed to be kept, if prior to the expiry of the delivery period, the material has left the plant or as soon as the readiness for shipment has been notified.
- 3.4 Insofar as Loacker is not able to conform to binding delivery dates for reasons beyond the control of Loacker (non-availability of the service), Loacker undertakes to immediately inform the contractual partner and to communicate the projected new delivery time. If the service cannot be provided within the newly determined delivery time, Loacker shall be authorized to rescind the contract in full or in parts; a financial consideration paid by the contractual partner will be refunded immediately by Loacker. The non-availability of the service as requested, means a late self-delivery by the subcontractor of Loacker or if neither Loacker nor his subcontractor are at fault for the missing or late supply.
- 3.5 The liability of Loacker in case of late delivery is limited in accordance with the provisions of Part A, clause 4 of the present delivery and payment terms.
- 3.6 Apart from that, the statutory rights of the contractual partner and of Loacker, particularly in the case of an exclusion of the obligation to perform, will remain unaffected (for instance due to the impossibility or unreasonableness of a performance and/or rectification).

4. Contract for delivery on demand

- 4.1 If, in cases of contracts for delivery on demand, the contractual partner does not call for the goods in time or if he omits to divide up the delivery in time, Loacker shall be authorized after the expiry of an appropriate period of grace determined by Loacker, to effect the division himself and to supply the goods or to rescind the unsettled part of the delivery contract.

5. Delivery and passing of risk

- 5.1 The DAP clause (Incoterms 2020) – delivery at place – on the delivery to the agreed place of destination shall apply to the delivery and passing of risk, unless otherwise provided by the contracting parties.
- 5.2 As soon as the goods are ready for shipment and the dispatch is delayed for reasons beyond the control of Loacker, or upon request by the contractual partner, the risk passes to the contractual partner after the receipt of the notification of the readiness for shipment.

6. Packaging

- 6.1 Where necessary, Loacker will pack the goods as commercially usual.

7. Partial shipments, partial default and partial impossibility of performance

- 7.1 Partial shipments are admissible and can be invoiced separately to an extent deemed reasonable to the contractual partner and provided he has an objective interest in a partial shipment.

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- 7.2 In case of a partial default or a partial impossibility, the customer can only rescind the contract or claim compensation for damages for non-performance of the entire performance, if the partial fulfilment of the contract is not of interest to him.
- 7.3 Apart from that, the partial delay shall be submitted to the regulations as set out in the clause 3 above.
- 8. Duties of inspection and notification of defects**
- 8.1 After arrival of the goods in the place of destination, the contractual partner must immediately inspect them. The duty of inspection of the contractual partner is applicable to the entire supply.
- 8.2 Obvious defects must be objected immediately, at the latest after the expiry of 7 workdays (Saturday is not considered to be a workday), in written form with detailed indication of the asserted individual defects; otherwise the goods shall be deemed accepted without complaint.
- 8.3 Hidden defects must be objected immediately after their detection, at the latest after the expiry of 7 workdays (Saturday is not considered to be a workday), in written form with detailed indication of the asserted individual defects; otherwise the goods shall be deemed accepted without complaint regarding any hidden defects.
- 9. Liability for material defects**
- 9.1 Loacker must be granted the opportunity to inspect the rejected goods.
- 9.2 If a timely objected defect is substantiated, Loacker will provide at his discretion supplementary performance in form of a replacement through defect-free goods, step by step against restitution of the objected goods. In case of a replacement, Loacker shall only be obligated to bear the costs of all expenses required for the purposes of the replacement (particularly transportation, circulation, work and material costs), insofar as the defect has been caused by Loacker and insofar as these expenses will not be increased by the fact that the goods have been transferred to another place as the place of fulfilment.
- 9.3 In case the supplementary performance remains without success, the contractual partner shall be entitled to a price reduction or a rescission of the contract as well as to indemnification in accordance with the statutory provisions; however, the scope of liability is limited in accordance with the provisions of Part A, clause 5 mentioned above.
- 10. Retention of title by Loacker**
- 10.1 **General "Simple retention of title":** Up to the complete payment of the purchase price to Loacker under the purchase contract, Loacker will reserve the ownership in the goods sold.
- 10.2 **Additionally agreed "Extended retention of title",** shall be applicable if goods sold by Loacker are in Germany or will be shipped there: Until complete payment of all present and future claims from Loacker under the purchase contract and in the course of a continued business relationship (secured receivables), Loacker will reserve the ownership in all sold goods. If a current account agreement has been concluded with the contractual partner, the retention of title shall be maintained until the complete settlement of the accepted current account balance.
- 10.3 Through processing the goods supplied by Loacker, the contractual partner does not obtain ownership in the goods entirely or partly produced; the processing is made free of costs exclusively for Loacker. However, if for any reason whatsoever, the retention of property will be lost, Loacker and the contractual partner agree as from now on that the ownership in the items will pass to Loacker along with the transfer of risk. Loacker accepts as from now this transfer of ownership. The contractual partner will remain the custodian of the goods which shall be free of charge.
- 10.4 In the event of the goods supplied by Loacker being processed, combined or mixed with other goods not owned by Loacker, the latter shall be entitled to co-ownership of the new product. The extent of this co-ownership will be based on the relation of the invoice value of the goods supplied by Loacker to the invoice value of the processed goods.
- 10.5 By the present, the contractual partner assigns the receivables from a resale of the goods subject to retention of title to Loacker, to the extent as the goods have been processed, combined or mixed. If the result of the processing of goods under retention of title does only contain items, that either belonged to Loacker or that were supplied exclusively under the so-called simple retention of title, the contractual partner assigns the entire purchase price claim to Loacker. Otherwise, i.e. in case of coincidence of previous cessions to several suppliers, Loacker is entitled to the fraction of the claim that corresponds to the proportion of the invoice value of the goods under retention of title to the invoice value of the other processed items.

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- 10.6 Upon request by the contractual partner, Loacker will release at his own discretion securities to which he is entitled in accordance with the afore mentioned conditions, if the value to be realised of security exceeds the claims to be secured by more than 10%.
- 10.7 As long as the contractual partner meets his payment obligations towards Loacker within the payment term, he shall be authorized to collect the receivables for himself until further notice.
- 10.8 Upon cessation of payment by the contractual partner, or an insolvency application regarding the assets of the contractual partner or an attachment of the goods under reservation of title, the right to resale or re-processing of the goods and to collection of the receivables will expire. Receivables collected after the cession must be paid without delay into a separate account.
- 10.9 Upon attachment, confiscation, seizure, damage and/or loss of the goods supplied, the contractual partner must notify Loacker immediately; a breach of this duty as well as upon any behaviour of the contracting party in breach of the contract, particularly in case of non-payment of the due purchase price, Loacker will be authorized to rescind the contract. The contracting party will bear all costs that must be spent in particular with an objection by a third party to the successful requisition of a seizure and if applicable, to a successful new purchase of the goods delivered if they cannot be collected by third parties.
- 10.10 If Loacker has withdrawn effectively from the contract, Loacker shall be entitled to take back the retained goods, provided the taking back has been notified within due term. The costs accrued through the exercise of the right of retraction, in particular for the transportation, shall be borne by the contracting party. Loacker shall be authorized to use the retained goods taken back and to avail himself of the proceeds from such disposal, provided the use has been notified within due term. If the proceeds exceed the unsettled claims under the contractual relationship, the excess amount will be transferred to the contracting partner.

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Annex – Sample – Withdrawal form

To Loacker Recycling GmbH, Lustenauerstrasse 33, 6840 Götzis, Austria; e-mail: kundencenter@loacker.cc

By the present, I/we (*) withdraw from the contract concluded by me/us (*) on the acquisition of the following goods (*)/the provision of the following services (*)

Ordered on (*)/received on (*)

Name of the consumer/s

Address of the consumer/s

Date and signature of the consumer/s (only if communicated on paper)

(*) Delete as applicable