

General Terms and Conditions

Locker Group, Switzerland

As of April 2021

§ 1 Scope of application

The present General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all offers, contracts and commercial transactions inclusive of all ancillary service provisions performed within the framework of the business activities of Locker Swiss Recycling AG (Dübendorf, Switzerland), Schläpfer Altmittel AG (St. Gall, Switzerland), Kuster Recycling AG (Ebnet-Kappel, Switzerland), Eggenberger Recycling AG (Schaan, Liechtenstein) and Eggenberger Recycling AG, branch Buch SG (Switzerland), Locker Ostschweiz Recycling AG as well as Locker Recycling AG (Schaan, Liechtenstein) (hereinafter referred to as "Locker") unless the Parties have agreed that the "General Terms and Conditions of Purchase and Order of the Locker Group Switzerland (Allgemeine Einkaufs- und Auftragsbedingungen der Locker Gruppe Schweiz)" shall apply. The German version of these General Terms and Conditions is authoritative, other language versions are purely for informational purposes.

Individual agreements made on a case-by-case basis with the customers prevail over these terms and conditions. A written contract or our written confirmation shall be decisive for the contents of agreements of this kind.

The present GTC may at any time be subject to changes by Locker 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. The latest valid version of the present GTC may be viewed at any time at <https://www.locker.ch/downloads>.

When entering the operational site, the visitor and/or supplier accepts the safety regulations of Locker displayed in the entry area as well as the current house rules.

§ 2 Ownership of the goods

The customer warrants and confirms towards Locker that all and any goods that he sells or delivers to Locker have been lawfully acquired, that the customer is the lawful owner of these goods or that the goods are under his exclusive power of disposition and that there are no rights of third parties in the goods sold and/or supplied. Moreover, the customer confirms that the goods do not originate from a punishable act or from VAT carousel business transactions (or similar transactions) or that the customer involved either directly or indirectly in such, even merely dubious transactions.

§ 3 Conclusion of the contract

Unless agreed in written form to the contrary, all our offers are subject to changes and will have no binding effect. Orders, offers, commissions and changes of orders, cancellations as well as all other agreements by us will only become binding when confirmed in written by Locker; silence or lack of response from Locker shall not be considered as consent.

§ 4 Pricing, terms of payment, taxes

Prices are based on stock market prices that are subject to permanent change. Unless a fixed price has been agreed upon in writing, the day of the delivery to or by Locker shall be decisive for the actual pricing. If a delivery is delayed for reasons beyond the control of Locker, the latter shall be entitled to adapt the prices accordingly.

Invoices will become due for payment without deduction upon receipt. The customer shall bear the risk of the payment method as well as of all accruing charges. If payment is delayed, default interest at a rate of 8% shall apply.

Cheques transmitted to Locker will only be accepted on account of payment.

§ 5 Retention of title

Retention of title for all customers

Goods supplied by Locker (goods under retention of title) will remain the ownership of Locker until complete settlement of all payment obligations by the customer. If the buyer does not meet his payment obligations, in particular in case of payment default, Locker shall be entitled to rescind the contract and to claim the restitution of the supplied goods. The customer shall be obliged to hand over the goods.

The customer shall be obliged to participate in measures of protection of the ownership by Locker. The customer will authorize Locker to record a retention of title in the relevant register.

The pledging of goods under retention of title must be notified to Locker without any delay and requires the previous written consent by the latter. The third party must be notified in writing by the buyer regarding the existing retention of title.

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Retention of title on goods that are exported to customers in Germany and Austria:

Extended retention of title

The acquirer of our goods shall be entitled to use them in the due course of orderly business and to resale them provided he is not in default of payment.

The customer assigns by now to Loacker all claims towards a buyer resulting from the resale of goods under retention of title. Loacker accepts these assignments.

The customer shall be authorized to collect the receivables resulting from his invoices in his own name. If the customer does not meet his payment obligations orderly, Loacker reserves the right to collect himself the receivables.

The processing and handling of the goods supplied will always be made in the name and on behalf of Loacker. If the processing requires items that are not owned by Loacker, the latter will obtain co-ownership in the newly created item in proportion of the value of the goods supplied to the value of the further processed items.

The same shall apply when material under retention of title is combined or mixed with items not owned by Loacker.

Expanded retention of title

The goods supplied by us remain the property of Loacker until settlement of all claims to which Loacker is entitled (now or in future) towards the customer.

Loacker undertakes to release goods under retention of title upon the request of the customer if the value of these goods exceeds the value of the receivables to be secured by more than 10%. The goods under retention of title to be released will be selected by Loacker.

§ 6 Obligation to accept and to take back

Material, waste and other substances – hereinafter referred to as “material” – that are handed over to Loacker for the purposes of processing, utilisation or disposal, pass into the ownership of Loacker with their handing-over.

Upon supply to Loacker, the customer warrants and declares that he is fully authorized to dispose of the material and that there are no existing rights of third parties in the material supplied.

Material, that is wrongly or incompletely declared or whose composition and nature is doubtful, will only pass into the ownership of Loacker upon a separate written declaration by Loacker regarding the transfer of ownership. Insofar as it can only be determined by examinations whether the material supplied can admissibly be accepted for the agreed purposes, such as disposal and/or processing, and if a visual inspection of the material does not allow for a doubtless determination as to whether the supply will be admissible, Loacker shall be authorized to refuse the acceptance of such goods. The customer shall be obliged to take back the material immediately and free of charge, if the goods have been accepted by Loacker on the basis of a wrong, incomplete or incorrect declaration.

Provided inadmissibly supplied material has to be taken back, Loacker is entitled – provided the previous owner refuses to take it back or does not take back the material within an appropriate term – to either dispose orderly of the material at the expense of the previous owner or to deposit the material temporarily in an appropriate storage place at the expense of the previous owner.

If due to an incorrect declaration of the material supplied and/or accepted, costs, damages or losses of any kind whatsoever will arise to Loacker, these expenses shall be indemnified completely by the customer upon a first request by Loacker, irrespective of a possible fault of the customer. The customer explicitly declares that the supplied material does not contain any hazardous material, problematic substances, nor waste oil. If recyclable waste material and/or problematic material is contained already at the delivery in the material, Loacker shall be entitled, even after acceptance, to refuse the supply or the refuse acceptance. Insofar as Loacker transports the material to landfill sites or to processing facilities, Loacker shall at any time be entitled to return the material provided if it is later determined that the material is not suitable for the contractually agreed disposal/processing or has been wrongly declared. Upon return of the material, the contract is cancelled and the customer must indemnify Loacker upon first request and irrespective of his fault, for all costs, damages and losses.

§ 7 Termination

Loacker shall be entitled to terminate the contract with immediate effect, if the assets of the customer (i) are subject to an insolvency procedure or if in default of cost-covering assets, an insolvency procedure cannot be instituted against him or (ii) enforcement procedures are pending against the customer or (iii) in cases of essential breaches of the contract by the customer due to violation of agreements that have not been eliminated by the customer despite a request by Loacker, within a term of 30 days, without the customer being entitled to any compensation for damages. In the case of an insolvency, Loacker shall be entitled to claim the return of supplied and not yet paid goods (see § 5 Retention of title).

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§ 8 Warranty, liability, ban on offsetting

Loacker warrants towards the customer that the goods at the point in time when supplied, do not have any substantial defects of processing or of material that might impair the orderly use of the goods. Any further material warranty as well as any warranty of title are explicitly excluded unless explicitly agreed otherwise in the confirmation of order and/or in the contract.

The mere designation of the products gives not rise to claims for any minimum standards. Loacker does not assume any warranty for instance for possible quality claims that might arise from the designation "quality substrate".

The customer is obligated to immediately inspect the goods after their delivery and must communicate any possible complaints within one week in written form to Loacker. Defects that will be detected only later, must be communicated in written by the customer within one week after their detection. After the assertion of claims for defects, Loacker shall be entitled, at his own discretion, to repair any possible defects, to completely or partly replace the goods or to reduce the purchase price (reduction). A right for the customer to rescind the contract (conversion) shall be excluded.

If the customer does not meet his obligation for inspection and reporting of complaints, all titles to warranty and compensation for damages will forfeit.

Warranty claims shall be come statute-barred unless another regulation has explicitly been agreed upon, 2 years after the supply of the goods. The two-years' term shall again apply to the goods delivered by Loacker as a replacement or for repaired goods.

Within the framework of legal admissibility, Loacker will assume the liability only for wilful or gross negligent fault, however not for slightly negligent behaviour.

The customer will not be authorized to offset own claims against claims by Loacker.

§ 9 Delivery dates, terms of delivery

Loacker endeavours at any time to satisfy agreed delivery dates and terms of delivery. Loacker shall be considered to be in default of delivery only after fruitless expiry of an appropriate period of grace of at least 14 days.

Interruptions of operation with Loacker, that prevent Loacker without his own fault, to supply the contractual goods within the agreed term (for instance interruptions due to force majeure, vandalism, etc.) will postpone the dates of delivery and extend the terms of delivery by the period of time required for the elimination of the impairment and the period of time required for restart of operations.

Possible claims for indemnification of the buyer resulting from a delayed delivery will only be satisfied in accordance with the provisions of § 8 in the event of wilful or gross negligence.

§ 10 Special provisions in the area of events and construction Retention of title

The lease object shall be and remain the property of Loacker. The leaseholder (customer) is not authorized to remove the symbols affixed to the lease object and shall not be authorized either to sell, pledge, donate, lease or transfer otherwise to third parties the lease object. The leaseholder will represent towards third parties the interests of Loacker. The leaseholder will immediately inform Loacker about possible events that will have an effect on the retention title of Loacker or the lease object itself, immediately after the supply (hand-over) of the lease object. This will particularly apply to a possible institution of an insolvency proceeding.

Return

The leaseholder undertakes to return the lease object with consideration of a usual wear in the same orderly state as at receipt of the lease object. Possible repairs and/or a necessary above-average cleaning will be separately invoiced to the leaseholder.

Damages

The leaseholder assumes towards Loacker the liability for the loss or damage of the lease object irrespective of fault and cause of the defect, even in case of force majeure, that occurred in the period of time between the receipt and the return of the lease object. A lease object returned in a damaged state will be repaired by Loacker immediately at the expense of the leaseholder.

Insurance

The lease object is not insured by Loacker. Loacker is entitled to request the leaseholder to have the lease object appropriately insured and to produce to Loacker, upon the request of the latter, an adequate certification and the insurance policies.

Takeover

When taking over the lease object, the leaseholder will inspect its condition and appropriateness for the projected purposes. The lease object will be leased in the as-is state. Unless immediate complaints are produced at the takeover, the leaseholder will not be entitled to any complaints that the lease object is not in the required condition or does not meet the projected purposes as regards its use. The leaseholder is obligated to make available an adequate location site and a reinforced access way for the lease object.

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Road conditions

The leaseholder must notify Loacker in due time prior to the arrival, regarding the road conditions, unless such access roads are obviously navigable by lorries. If the contracting partner omits such information, Loacker will not assume any liability for damages that might be caused through driving on the road or due to the fact that the road is not navigable (for instance: late arrival, impossibility); possible damages must be compensated by the contracting partner.

Authorization

Any authorizations possibly required for the setting-up, the installation and/or use of the lease object must be obtained by the leaseholder. The lease object can only be used after an appropriate training by an employee of Loacker. Trainings of employees of the leaseholder will be confirmed in writing by Loacker and must be produced by the leaseholder on request.

Repositioning of the lease object

The leaseholder or third parties shall not be authorized to reposition, move, load or unload the lease object except for the intended and agreed purposes.

Liability

Loacker will not assume any liability for direct or indirect damages of any kind whatsoever, that might occur to the leaseholder or third parties through the lease object. In particular, Loacker will not assume any liability for damages that will occur due to a non-participation in training courses and/or outside the training area. Neither will Loacker assume any liability, regardless of the fact whether there has been a training course or not, of whether there was a consent or a supervision by an employee of Loacker or not, if the lease object was repositioned, moved, loaded or unloaded except for the intended and agreed purposes. This shall apply in particular but not exclusively, when the leaseholder fills the lease object with other material or with material of another composition than agreed. The leaseholder is obligated to completely indemnify Loacker and hold him harmless upon first request against any claims by third parties resulting from or in connection with the lease object, irrespective of any possible fault of the leaseholder.

Leaseholder's duty of notification

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.

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.

Charges

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.

§ 11 Specific provisions for doorstep transactions and similar contracts

In the case of doorstep transactions and similar contracts concluded for mobile items and services that are intended for the individual use of the customer or his family, the customer will be entitled to a statutory right of revocation in accordance with the provisions of art. 40 ss OR. § 16 (last paragraph) shall be reserved.

§ 12 Special terms under waste law

The contracting party is responsible and shall ensure that the waste producer or the loading point issues all necessary papers in accordance with the provisions of Annex VII of the regulation (EC) Nr.1013/2006 on shipments of waste, as amended. The duly completed documents must be handed over prior to the start of each shipment. The contracting partner is obligated to completely indemnify Loacker and hold him harmless against any claims upon first request and irrespective of any possible fault of the contracting party.

§ 13 Special terms in the case of centralized purchasing

An order placed by Loacker with suppliers (not material suppliers), that was made via the centralized purchasing department or directly by Loacker, shall only be binding, if this order mentions the purchase order number as well as the cost centre of Loacker. Invoices without any purchase order number and cost centre of Loacker will not be accepted by Loacker.

Payment terms and discount terms possibly granted by the supplier to Loacker will be calculated as from the arrival of the goods and not as from the date of the invoice.

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§ 14 Place of fulfilment, subcontracting

The place of fulfilment shall be the place of the registered office of the respective Loacker company and/or its branch, unless another place of fulfilment has explicitly been agreed in writing.

Loacker shall be entitled to use third parties for the fulfilment of his contractual duties.

§ 15 Data processing, credit assessment

Loacker processes personal data such as the name and the contact address of the customer to the extent as required in order to be able to perform the contractual services. The customer will inform his employees and subcontractors as well as third parties whose data he will transmit to Loacker, about the processing of their personal data by Loacker in connection with the present contract, so that Loacker will meet his information duties in conformity with the applicable data protection act.

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. Loacker shall also be entitled to transmit personal data to service providers at home or abroad, even if such service providers are located in countries that have not the same level of data protection as usual in Switzerland, the EU or the EEA. Loacker will set adequate measures to protect personal data.

The customer acknowledges that Loacker reserves the right to conclude contracts with customers only after a positive credit assessment and/or to conclude contracts with customers with a negative credit assessment only after an advance payment. To these purposes, Loacker reserves the right to transfer personal data that are requested for a credit assessment such as name, address and information on the asset situation to external credit reference agencies. 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.

In the case a person concerned makes a request under the data protection law to the customer (for instance a request to get access to his personal data), that refers to personal data whose processing is under the responsibility of Loacker, the customer will transmit this request without delay to Loacker. The customer will also inform Loacker on requests under data protection law by authorities, insofar as this is permitted to him, and he will make available to Loacker the accompanying documents (if available) in order to respond to such requests by the persons or authorities concerned. The customer undertakes to assist Loacker with the answering in an appropriate manner.

For further information regarding the handling of personal data by Loacker and regarding the rights of persons concerned, please refer to the data privacy terms of Loacker at <https://loacker.ch/datenschutzerklaerung>.

§ 16 Legal venue, applicable law

All and any legal relationships between Loacker and the customers and/or Loacker and the suppliers are governed by Swiss law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

The exclusive place of jurisdiction shall be the court in the place of the registered office of the respective Loacker company, with the following exclusions: (i) in the case of business relationships with Eggenberger Recycling AG and/or Eggenberger Recycling AG, 9494 Schaan (LI), branch office Buchs St. Gall (Switzerland) the exclusive place of jurisdiction shall be Buchs (St. Gall); (ii) in the case of business relationships with Loacker Swiss Recycling AG the exclusive place of jurisdiction shall be Dübendorf (Zurich). However, Loacker is free to sue in the competent court at the place of the registered office and/or domicile of the customer and/or supplier.

The afore mentioned choice of applicable law and the legal venue shall not apply if and insofar as the customer is in accordance with the applicable legal rules (i) a consumer) under the terms of Swiss law or another applicable legislation and (ii) is entitled to statutorily refer to the application of another law and/or the competence of another court.

§ 17 Miscellaneous

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.