



## GENERAL TERMS AND CONDITIONS OF SCRAP METAL PURCHASE – TOM SP. Z O.O.

„TOM” Spółka z ograniczoną odpowiedzialnością, with its registered office at ul. Pomorska 112, 70-812 Szczecin, entered into the register of businesses of the National Court Register kept by the District Court for the district of Szczecin – Centrum in Szczecin, 13<sup>th</sup> Business Department of the National Court Register, under reference number 0000118719, Tax Identification Number (NIP) 851-030-58-95, National Business Register (REGON) number 005456928, hereinafter the ‘Principal’, hereby implements the following ‘General Terms and Conditions of Scrap Metal Purchase’, hereinafter the ‘Terms and Conditions’, pursuant to article 384 of civil code:

### §1

Whenever the following terms are used in these Terms and Conditions, they shall be construed as follows:

1. Terms and Conditions – General terms and conditions of scrap metal purchase

2. Scrap metal:

a. feedstock scrap metal – pre-prepared scrap metal, in a form, of dimensions, mass, chemical makeup and maximum contamination levels that enable its economical and safe use as feedstock in furnaces used to smelt steel, cast iron, crude iron and ferroalloys;

b. non-feedstock scrap metal – scrap metal that requires mechanical or manual processing prior to its use by the end user in order to obtain the required dimensions, form and mass and to remove any metallic and non-metallic contaminations within the limits allowable under the Polish standard of steel scrap, PN-85/H-15000.

3. Supplier – an entity, including a business owner within the meaning of article 431 of civil code, submitting an offer to enter into an agreement or to whom the Principal submits a request for quotation or purchase order.

4. Recipient – entity to whom the scrap metal included in the Purchase Order submitted to the Supplier by the Principal is delivered.

### §2

All provisions of these Terms and Conditions apply to any and all agreements for the sale of scrap metal, including actions preceding the execution of any such agreement, where the Principal acts as the buyer or intermediary, unless the parties to the agreement expressly agree to exclude the application of all or some of these Terms and Conditions. Any such exclusion referred to in the preceding sentence shall be invalid unless made in writing.

### §3

Unless agreed otherwise, Terms and Conditions shall be used in their currently applicable version. The currently applicable version of these Terms and Conditions shall be available in electronic format at [www.tom-sp.pl](http://www.tom-sp.pl).

### §4

Unless the Principal and Supplier agree otherwise in writing, the use of any standard contractual terms of the Supplier is hereby excluded. Supplier’s standard contractual terms shall also not apply unless the Principal expressly agrees to their inclusion. The acceptance or collection of goods by the Principal without an express acceptance or payment by the Principal for purchased scrap metal without any objections shall in no event be construed as the acceptance of the Supplier’s standard contractual terms.

### §5

Employees of TOM shall not be authorized to include any Supplier’s standard contractual terms in the terms and conditions of scrap metal purchases or to accept the application of the Supplier’s standard contractual terms, unless the terms of their power of attorney expressly stipulate otherwise.

### §6

In case of any discrepancies between the terms of the purchase order submitted by the Principal and these Terms and Conditions, the terms of the purchase order shall prevail.

### §7

Parties shall negotiate all material terms of each agreement. After agreeing upon the terms, the Principal shall send the Supplier, by regular mail, email or fax, a purchase order for scrap metal that will include the contractual terms agreed by the



parties during negotiations. Failure to submit an immediate written rejection of the purchase order by the Supplier shall be construed as an acceptance of the agreed terms sent to the Supplier as a purchase order. Commencement of deliveries by the Supplier to the Principal shall also be construed as the acceptance of agreed terms and conditions as confirmed by sending a purchase order.

## §8

Unless the purchase order expressly states otherwise, the purchase price of scrap metal agreed by the parties shall also include transport of the scrap metal to the location specified in the purchase order. Where the Principal covers the costs of transport during the performance of any purchase order, it shall be entitled to charge any transport (freight) costs incurred to the Supplier.

## §9

The Supplier shall bear the risk of accidental loss of scrap metal, referred to in article 548 of civil code, during transport and unloading operations.

## §10

The final weight and quality class of the scrap metal delivered by the Supplier shall be determined based on the weight and quality class specified to the Principal by the Recipient.

## §11

Tests of supplied scrap metal to determine whether it is defective or fails to meet quality requirements shall at the earliest be carried out after the scrap metal is unloaded at the Recipient's site.

## §12

Should the scrap metal be defective, or should it fail to meet the terms of the agreement or purchase order, the Supplier shall remedy the damage incurred by the Principal or the Recipient in full, including any lost revenue and any liquidated damages charged to the Principal by the Recipient.

## §13

The Supplier's scope of liability shall also include costs of repair or replacement of Recipient's equipment that was damaged as a result of the

defective nature of the scrap metal delivered by the Supplier or its failure to meet the terms of the agreement.

## §14

The Parties agree that unloading the goods by the Supplier shall be construed as the Supplier's acceptance of these Terms and Conditions and the Principal's pricing terms.

## §15

Supplier's liability under statutory warranty shall not expire prior to the expiry of the Principal's liability in respect of the Recipient under statutory warranty.

## §16

Supplier's liability shall also include liability for any and all damage caused to the Recipient or Principal by the Supplier or its subcontractors (including carriers), even if only indirectly in connection with the performance of this agreement. Should the Principal be charged by the Recipient with any costs related to damage caused by the Supplier or its subcontractors (including carriers), the Supplier shall reimburse the Principal for all incurred costs.

## §17

In case of any defects, including, but not limited to inconsistency of the actual quality of scrap metal with its declared quality or contamination of the purchased scrap metal, the Principal may, at its own discretion, demand an appropriate reduction in the purchase price or delivery of scrap metal free of any defects in place of the defective scrap metal, or rescind the agreement or purchase order.

## §18

Delivery of scrap metal of classes not included in the purchase order and in amounts exceeding those specified in the purchase order (unless otherwise agreed) shall be at the Supplier's risk and the Recipient shall be entitled to refuse to accept such deliveries or accept them on terms unilaterally agreed by the Principal with the Recipient – including for a lower price than the price specified in a given purchase order.



## §19

Should the Supplier fail to fully perform the purchase order within the agreed deadline, the Supplier shall pay contractual damages to the Principal in an amount equivalent to 10% of the net value of the purchase order, if the purchase order was between 95% and 100% complete, and should the Supplier perform the purchase order within the agreed deadline but deliver less than 95% of the amount of scrap metal specified in the purchase order, the Supplier shall pay contractual damages to the Principal in an amount equivalent to 30% of the net value of the purchase order.

## §20

Should the scrap metal delivered by the Supplier fail to meet quality requirements, the Principal reserves the right to immediately suspend the performance of the agreement or rescind the agreement in whole or in part – the Principal's declaration of suspending or rescinding the agreement may be delivered to the Supplier in any form, including by fax and email. Should the Principal exercise the above right, the Supplier shall not be entitled to any claims in connection with the Principal's suspension or rescission of the agreement.

## §21

1. The parties agree that valid invoices attached to deliveries shall be paid by bank transfer into a checking account.  
2. The date on which the Principal's bank account is charged with the appropriate amount shall be construed as the date of payment of the amounts due to the Seller. Irrespective of the amount, payments will be made using the split payment mechanism.

## §22

1. The Supplier declares and/or undertakes that:  
1) it is a payer of VAT within the meaning of the value added tax act of 11 March 2004;  
2) the account specified by the Supplier for the purposes of disbursement of remuneration is a checking account with a VAT account linked as per the provisions of the banking law act of 29 August 1997 and is the appropriate account for making

payments based on the split payment mechanism as per the provisions of the value added tax act;

3) the account specified by the Supplier for the purposes of disbursement of remuneration is included in the electronic list of entities kept by the Chief of the National Tax Administration (the so-called white list of VAT payers) as per the provisions of the value added tax act;

4) the Supplier's checking account is consistent with the declarations in subsections 2 and 3 above and shall be included in all invoices issued by the Supplier based on Purchase Orders;

5) the Supplier shall immediately notify the Principal in writing of any change in the number of the checking account or its removal from the electronic list of entities.

2. Should the checking account number on the invoice issued by the Supplier not be included in the electronic list of entities referred to in the value added tax act, the Principal shall immediately notify the Supplier of this fact and withhold the payment of the amount specified in the invoice. In such event, the Supplier shall not be entitled to charge interest for late payment of remuneration included in the invoice in question or any compensation on account of such withholding of payment. However, should a Supplier's checking account with a different number than the account specified in the invoice be included in the electronic list of entities on the date on which the Principal orders the payment of the amount specified in the invoice, the Principal shall be entitled to transfer the amount specified in the invoice into the bank account included in the electronic list of entities as of the date of payment and in doing so shall be deemed to have complied with the duty to pay the amount specified in the invoice, to which the Supplier hereby agrees.

3. Should the Principal be ordered to pay any public charges as a result of the Supplier's breach of obligations resulting from provisions of tax law or these Terms and Conditions, including should tax authorities order the Principal to pay additional tax or should the Principal be prevented from posting a given cost as a tax deductible expense as a result of such a breach, the Principal shall be entitled to deduct an amount equivalent to the public charge



levied on the Principal or to the cost prevented from being posted as a tax deductible expense from any amounts due to the Supplier, to which the Supplier hereby agrees, and where no such deduction is possible, the Supplier shall be required to pay this amount to the Principal within the deadline specified in the Principal's demand for payment.

4. The Supplier shall be liable for any damage incurred by the Principal as a result of the Supplier's specification of an account not included in the electronic list of VAT payers kept by the National Tax Administration as its checking account, as a result of the Supplier's failure to notify the Principal of any change of the account number included in the list as per these Terms and Conditions, and as a result of the Supplier's issuance of an invoice that fails to conform to these Terms and Conditions and general provisions of law.

#### §23

Should the Supplier, its employee or subcontractor damage the reputation of the Principal through committing illegal acts in respect of the Recipient or its employees in connection with the performance of this agreement, as notified to the Principal by the Recipient, the Supplier shall pay liquidated damages to the Principal in an amount equivalent to 30% of the net value of a given purchase order.

#### §24

Any disputes that arise between the parties in connection with the performance of this agreement or any purchase order shall be resolved by a court of law holding local jurisdiction over the Principal's registered seat, in accordance with the laws of Poland.

#### §25

The Principal shall not be liable for failing to perform or improperly performing the agreement/purchase order/quotation insofar as it results from a force majeure event. In case of experiencing a force majeure event, the Principal shall be released from its obligation to carry out its duties or part thereof, in particular to collect contracted scrap metal, if such duties cannot be performed due to force majeure, including where the Recipient to whom the scrap metal is delivered suspends or limits the acceptance of goods from the Principal due to a force majeure event. For the purposes of these Terms and Conditions, force majeure shall be defined as an extraordinary external event that could not have been prevented or avoided by the parties, even with the application of maximum care. In particular, force majeure shall include events such as: strike action, blockades of roads and streets and other situations preventing transport on public roads, extraordinary weather conditions, malfunctions of machines and devices used to process scrap metal, construction disasters and shortages of materials or raw materials, state of epidemiological threat, announcement of a state of emergency, prohibition/limitation of business activity carried out by the Principal/Recipient. Where a force majeure event affects the activity of the Principal or the Recipient and persists for more than 7 days, the Principal shall be entitled to rescind the agreement/purchase order/quotation, and the Supplier shall not be entitled to any claims in connection therewith.

#### §26

These updated Terms and Conditions shall apply as of 14 February 2020.