



Deutsche Gesellschaft
für Kreislaufwirtschaft
und Rohstoffe mbH

Standard Contract Terms

of

**Deutsche Gesellschaft für
Kreislaufwirtschaft und Rohstoffe mbH**

for Recycler Contracts (AVBV)

– Invoicing by Contractor –

September 2 2008

Contents

A. Underlying principle	
Article 1 Definitions, underlying principles	4
B. Obligations of DKR	
Article 2 Principal obligations.....	5
Article 3 Object and quantities	5
Article 4 Execution.....	5
C. Obligations of the Contractor	
I. Principal obligations	
Article 5 Principal obligations.....	6
II. Provisioning of recycling capacities	
Article 6 Basic principle, Contractor's duty of presentation.....	6
Article 7 Certification	6
III. Acceptance of DSD Plastics.....	
Article 8 Quantity, annual plan, delivery dates.....	7
Article 9 Weighing, unloading, confirmation of receipt.....	7
Article 10 Obligation to examine and object	8
Article 11 Storage upon receipt	8
Article 12 Transfer of ownership.....	8
IV. Recycling.....	
Article 13 Recycling.....	8
Article 14 Mechanical recycling	9
Article 15 Feedstock recycling.....	9
Article 16 Energy recovery	10
Article 17 Contractor's duty to notify	10
V. Obligation to produce supporting documents for receipt, storage and recycling	
Article 18 Basic principle, general obligation to produce supporting documents	10
Article 19 Demonstration of committal to and retrieval from storage	11
Article 20 Obligation to produce supporting documents for processing and recycling...	11
Article 21 Obligation to preserve records	12
VI. Control rights of DKR	
Article 22 Inspection and examination rights	12
D. Invoicing.....	
Article 23 Invoicing by the Contractor	13

E. Breaches of obligation by DKR	
Article 24 Basic principles	13
Article 25 Delivery of defective DSD Plastics	13
Article 26 Breach of delivery obligation according to delivery schedule	14
F. Breaches of obligation by the Contractor	
I. General provisions	
Article 27 Basic principles	14
Article 28 Termination of recycler contract for good cause.....	15
Article 29 Suspension of deliveries.....	15
II. Requirements to be satisfied by the recycling plant and the business of the Contractor.....	
Article 30 Reasons for termination	15
III. Obligation to accept and store.....	
Article 31 Reasons for termination	16
Article 32 Adjustment of Delivery Quantity	16
IV. Obligation to recycle.....	
Article 33 Reasons for termination	16
V. Obligation to produce supporting documents, control rights	
Article 34 Reasons for termination	17
VI. Contractual penalty.....	
Article 35 Contractual penalty.....	17
G. Frustration or change in inherent basis of contract, force majeure	
Article 36 Termination in case of frustration of contract.....	18
Article 37 Force majeure	18
H. Contractor's insurance.....	
Article 38 Insurance.....	19
I. Duration, closing provisions	
Article 39 Duration.....	19
Article 40 Confidentiality	19
Article 41 Contractor's right of retention in respect of DSD Plastics	19
Article 42 Applicable law, contract language	20
Article 43 Venue	20
Article 44 Annexes; written form.....	20
Schedule of Annexes to Recycler Contract	
Annex 1 Transport document	21
Annex 2 Quality inspection procedure	22

**Standard Contract Terms of
Deutsche Gesellschaft für Kreislaufwirtschaft und Rohstoffe mbH
for Recycler Contracts (AVBV) – Invoicing by Contractor –
September 2 2008**

Within the framework of the present Standard Contract Terms ("Contract Terms"), Deutsche Gesellschaft für Kreislaufwirtschaft und Rohstoffe mbH is abbreviated to "DKR"; the party to the recycler contract brought about with DKR is the "Contractor".

A. Underlying principle

Article 1 Definitions, underlying principles

- 1.1 The legislator has decided to exempt manufacturers and distributors of goods from the obligation to take back sales packaging if collection and recycling of the used sales packaging in compliance with Article 6 Paragraph 3 of the Ordinance for the Avoidance and Recycling of Packaging Waste of August 21 1998 ("VerpackV") is ensured. In this context, a system ("Dual System") was established by way of a private limited liability company, Der Grüne Punkt - Duales System Deutschland GmbH, with the objective of satisfying the statutory preconditions for exemption from the obligation to take back sales packaging. For this purpose, the packaging is collected and sorted by way of the Dual System. The sorters have the task of sorting the waste according to its principal constituent (e.g. tinplate, plastic) and, in particular but not exclusively, sorting the plastic waste according to the valid specification into the individual fractions or plastic types. The sorted fractions are supplied to contractors for proper and verifiable recycling.

For this purpose, Der Grüne Punkt – Duales System Deutschland GmbH uses the services of DKR. DKR organises the collection of the sorted fractions from the sorting facilities and recycles same.

- 1.2 DKR does not dispose of recycling facilities of its own. DKR appoints suitable contractors to perform the recycling. The Contractor has thus been appointed by DKR to recycle, properly and in a verifiable manner, plastic waste collected and sorted within the framework of the Dual System, and to recycle, properly and in a verifiable manner, intermediate products manufactured from such plastic waste (collectively hereinafter "DSD Plastic"). The recycling is to take place as per Article 5 Paragraph 3 KrW-/AbfG (Closed Substance Cycle Waste Management Act – Kreislaufwirtschafts- und Abfallgesetz).

B. Obligations of DKR

Article 2 Principal obligations

The principal obligations of DKR are

- (1) to supply the Contractor with DSD Plastics and
- (2) to pay remuneration.

Article 3 Object and quantities

- 3.1 DKR shall seek to supply the Contractor pro rata, free Contractor's address, for the duration of the contract with the agreed quantity of DSD Plastics ("Delivery Quantity"), save as otherwise agreed between the Contractor and DKR. The supply of 80 % of the Delivery Quantity is agreed as a fixed amount, save as allowed by provisions of the present Contract Terms that can give rise to a change in the Delivery Quantity. The remaining amount of 20 % is to be supplied by DKR save as hindered by actual, objectively explicable circumstances beyond the control of DKR. Such circumstances shall exist, in particular, in the case of incalculable reductions in available quantities occurring in the course of a year. In individual cases, a "spot delivery" can be agreed, being a certain quantity distributed between one or more consignments in compliance with a spot contract.
- 3.2 An obligation to supply does not exist before DKR is in possession of the certificate as per Article 7.
- 3.3 The product specifications of the DSD Plastics to be supplied ("Merchandise") are contained in the annex to the contract. Changes to the product specifications are to be agreed separately by the parties. The Contractor is obliged to agree to changes proposed by DKR unless he demonstrates that such agreement would be unreasonable for objective reasons.

Article 4 Execution

- 4.1 DKR shall agree with the Contractor by no later than the 15th of each month a delivery schedule for the following month on the basis of the agreed Delivery Quantity, determining the quantity of DSD Plastics to be supplied to the Contractor in the following month. DKR shall perform its material planning on the basis of said delivery schedule. DKR shall allocate to the Contractor the DSD Plastics reported ready by the sorters or refiners by issuing a **transport document** as per the specimen in **Annex 1**. The transport document indicates an order number, which is to be stated by the Contractor on all supporting documents and corresponding invoices; the document also indicates the carrier/forwarder appointed by DKR to carry the goods.
- 4.2 If agreement concerning the delivery schedule is not reached, DKR shall be obliged to supply the Delivery Quantity to the Contractor monthly on a pro rata basis, so that the entire Delivery Quantity is supplied by the end of the year.

- 4.3 DKR is not obliged to make deliveries to the Contractor on Saturdays, Sundays or public holidays. Deliveries are to be made within normal business hours. The Contractor is obliged to facilitate acceptance of the delivered DSD Plastics during normal business hours.

C. Obligations of the Contractor

I. Principal obligations

Article 5 Principal obligations

The principal obligations of the Contractor are

- (1) to provision recycling capacities,
- (2) to accept the DSD Plastics delivered by DKR,
- (3) properly to recycle same in compliance with the contract,
- (4) to keep supporting documents indicating acceptance, storage and proper recycling in compliance with the contract, and
- (5) to provide assistance in case of controls by DKR.

II. Provisioning of recycling capacities

Article 6 Basic principle, Contractor's duty of presentation

- 6.1 The Contractor undertakes to place at the disposal of DKR the agreed recycling capacities for DSD Plastics in the recycling plant specified by the parties.
- 6.2 The Contractor acknowledges, in view of the obligations of DKR within the framework of the Dual System, that proper recycling in compliance with the contract as constructed by the present Contract Terms can take place only in a recycling plant that is designed, built and operated according to the statutory provisions.
- 6.3 The Contractor warrants that he is in possession of all the permits required under public law for the operation of the recycling plant, and shall comply with any existing conditions. The Contractor shall submit copies of such permits to DKR on request.
- 6.4 The recycling plant shall also include all services and facilities additionally operated by the Contractor in performance of the recycling contract, e.g. administration, accounts, storage and ancillary equipment.

Article 7 Certification

Before the inaugural delivery, the Contractor must at his own expense obtain from a recognised expert, for the plant to be supplied, a certificate according to the version

of the Directive on the Proper Disposal of Waste from Health Service Institutions (LAGA-Richtlinie) that is valid at the time of certification. The issued certificate, including the full report is to be presented to DKR, without same making an express request, no later than two weeks before the scheduled inaugural delivery. When the certificate's expiry date is approaching, the Contractor must present the replacement certificate to DKR, without same making an express request, two weeks before said expiry date.

III. Acceptance of DSD Plastics

Article 8 Quantity, annual plan, delivery dates

- 8.1 The Contractor is obliged to accept the agreed quantity of DSD Plastics from DKR.
- 8.2 The Contractor is obliged to give DKR written notice of the periods set aside for works holidays and inspection outages in good time, being no later than six weeks before such a shutdown.
- 8.3 The Contractor shall agree directly with the carrier/forwarder, within the framework of the delivery schedule, the days and times for delivery of the DSD Plastics.

Article 9 Weighing, unloading, confirmation of receipt

- 9.1 Upon delivery, the forwarder/carrier shall give the Contractor a copy of the weighing receipt issued by the sorter/refiner/warehouse from which the consignment was collected ("**Consignor's Weighing Receipt**"). The Consignor's Weighing Receipt must indicate the truck licence plate number, the date and time of weighing, a weighing receipt number, the gross, tare and net weights, the plastic fractions and the order number, and it must be signed by the person responsible for weighing. Weighing receipts that have been produced manually or amended are not to be recognised. Manual entries are allowed only to indicate the weighed plastic fraction, the order number and, if applicable, the manual deduction of amounts for loading gear and packaging etc. The information contained on the transport document and weighing receipt, indicating the weight of the delivered quantity of DSD Plastics and the article name, must agree.
- 9.2 The Contractor undertakes to examine, by measuring the weight himself, whether the weight of the delivered quantity of DSD Plastic corresponds to that stated in the Consignor's Weighing Receipt; as regards the weighing receipt, Article 9.1 Sentences 2-5 apply mutatis mutandis. In case of discrepancies of less than 100 kg or if the Contractor does not measure the weight, invoicing as per Article 23 shall be governed by the weight indicated in the Consignor's Weighing Receipt. In case of discrepancies of more than 100 kg, the Contractor shall measure the tare weight. If the discrepancy between the values indicated in the transport document and weighing receipt remains greater than 100 kg, the Contractor shall immediately notify DKR and reach mutual agreement with same concerning the next steps.

- 9.3 If the result of weighing by the Contractor agrees with the data stated in the Consignor's Weighing Receipt or differs by less than 100 kg, the Contractor shall confirm receipt of the delivered quantity of DSD Plastic by signing and marking with the company stamp the transport document likewise presented by the forwarder/carrier.
- 9.4 The Contractor is obliged completely to unload the delivered DSD Plastics immediately after the gross weight has been measured.

Article 10 Obligation to examine and object

- 10.1 The Contractor is obliged immediately after the DSD Plastics have been weighed and unloaded to examine same for compliance with the contractually agreed product specification and immediately to object to variances from the specification using the relevant procedure or complaint form. If the goods are delivered in bales, the procedural **instruction for quality inspections** set forth in **Annex 2** is to be applied.
- 10.2 If the Contractor does not object timely, Article 377 HGB (German Commercial Code – Handelsgesetzbuch) shall apply mutatis mutandis.

Article 11 Storage upon receipt

- 11.1 The Contractor is obliged to store the DSD Plastics in consignments, separately from other incoming materials and in a dry place until they are recycled.
- 11.2 The Contractor undertakes in consultation with DKR (delivery schedule as per Article 4.1) continuously to hold in store 1/52 of the annual delivery quantity of DSD Plastics.

Article 12 Transfer of ownership

Ownership passes to the Contractor upon delivery to the Contractor.

IV. Recycling

Article 13 Recycling

- 13.1 The Contractor undertakes to recycle the accepted DSD Plastics in the recycling plant properly and in compliance with the contract. The recycling shall take place, depending on the written individual agreement, by way of mechanical or feedstock recycling or energy recovery, as per the provisions set forth hereinafter.

- 13.2 The Contractor is not entitled to sell, store, pass on or dispose of the DSD Plastics or intermediate products arising during processing, unless occurring within the framework of proper recycling in compliance with the contract. In particular, passing on DSD Plastics or such intermediate products to customers who undertake further waste-specific separation steps is not allowed.

Article 14 Mechanical recycling

- 14.1 **Mechanical recycling** takes place in the case of DSD Plastics from which, with a monthly average yield of 70 % of the processed DSD Plastics, marketable products have been manufactured ("processing") and marketed. The processing must be concluded within six weeks of delivery as indicated by the transport document, and is to be safeguarded by the Contractor implementing quality assurance measures and controls.
- 14.2 **Marketable products** within the meaning of Article 14.1 are products that satisfy the requirements concerning mechanical recycling of the Closed Substance Cycle Waste Management Act, the VerpackV, the declaratory decisions of the federal states and of the administration practices evolved in this respect, and are harmless from a biotoxicology perspective. Seconds are also marketable products provided that the quantity and defects of such products remain within the bounds of what is customary for second-choice products in the relevant category, and that a market for seconds exists.
- 14.3 **The yield** in the meaning of Article 14.1 is the ratio of the weight of DSD Plastics processed per month as per the Consignor's Weighing receipt (Article 9) and the monthly WMK report to the weight of the marketable products manufactured therefrom, less any additives (e.g. fillers, compatibilizers) and admixtures of other substances that are not DSD Plastics.
- 14.4 **"Marketed" products** in the meaning of Article 14.1 are marketable products that have been sold and introduced into the business cycle, at a market price and on conditions granted to any third party, within six months of the delivery date as per the transport document.

Article 15 Feedstock recycling

- 15.1 **Feedstock recycling** takes place in the case of DSD Plastics which, in compliance with the requirements of Article 4 Paragraph 3 Sentence 1 KrW-/AbfG, the VerpackV and the administration practices evolved in this respect, have been completely consumed in the feedstock recycling procedure operated by the Contractor in his recycling plant.
- 15.2 The Contractor is obliged to carry out the complete recycling within six weeks of the delivery date as per the transport document.

Article 16 Energy recovery

- 16.1 **Energy recovery** takes place in the case of DSD Plastics which, in compliance with the requirements of Article 4 Paragraph 4 Sentence 1 KrW-/AbfG, satisfying the prerequisites as per Article 6 Paragraph 2 Sentence 1 Nos. 1–4 KrW-/AbfG, and in compliance with the requirements of the VerpackV, including the administration practices evolved in this respect, have been used entirely as a substitute fuel.
- 16.2 The Contractor is obliged to carry out the complete recovery procedure within six weeks of the delivery date as per the transport document.

Article 17 Contractor's duty to notify

The Contractor is obliged to notify DKR immediately in writing of every material impairment of proper recycling in compliance with the contract, indicating the reasons. This applies in particular to underachievement of the yields as set forth in the foregoing provisions, non-compliance with the prerequisites for energy recovery as per Article 6 Paragraph 2 Sentence 1 Nos. 1–4 KrW-/AbfG, and to the adoption, amendment or rescission of public law decrees, permits and licences concerning operation of the recycling plant and/or associated raw material store, especially those governed by Article 6.3. Further obligations to notify shall remain unaffected.

V. Obligation to produce supporting documents for receipt, storage and recycling

Article 18 Basic principle; general obligation to produce supporting documents

- 18.1 In view of the special obligations of DSD and DKR within the framework of the Dual System, the Contractor is obliged, beyond the duty to observe the generally acknowledged accounting principles and to exercise the diligence of a prudent businessman, to demonstrate to DKR, by way of suitable documentation (e.g. operating logs, internal material and mass flow documents, weighing receipts, store books, marketing invoices, production ledgers, inventory documents, energy consumption accounts, shift logs etc.), the correctness, in compliance with the contract, of the acceptance, committal to and retrieval from storage, and recycling of the DSD Plastics, and on request immediately to present DKR or a third party authorized by DKR and bound to secrecy with all documents required by DKR to demonstrate compliance with the prerequisites of the Closed Substance Cycle Waste Management Act, Article 6 Paragraph 3 VerpackV, as well as the declaratory decisions of the federal states and of the administration practices evolved in connection with same. If such presentation is associated with the danger of revealing operating secrets, DKR can, at the Contractor's expense, engage a third party being bound to secrecy to inspect, compile and anonymise the required data.
- 18.2 In order to facilitate additional continuous monitoring by DKR, the Contractor shall, in compliance with the provisions set forth hereinafter, present DKR with monthly WMK reports and monthly check lists produced on the basis of

the individual documents; the obligation to produce supporting documents as per Article 18.1 shall remain unaffected hereby. DKR reserves the right to introduce a remote data transfer system to replace the presentation of these documents entirely. The Contractor's warranty of the accuracy and completeness of the monthly WMK reports and check lists shall not be affected thereby.

Article 19 Demonstration of committal to and retrieval from storage

The Contractor shall, by the 10th day of the following month in each case, record the monthly committals to and retrievals from the incoming and outgoing stores in compliance with Article 18.1. For the purposes of producing the monthly quantity statement, DKR shall enable the Contractor to access a system for transferring the data for the WMK reports via the internet address <https://213.168.113.29>. Brief operating instructions for the "WMK reports" remote data transfer system are available via this internet address. The Contractor is obliged to process the data records displayed in the forenamed remote data transfer system and to demonstrate to DKR the monthly inbound and outbound recycling movements by presenting a completed, printed and signed monthly WMK report, without any omissions, by the 10th day of each subsequent month. The weights indicated for the committals to the incoming store must agree with those stated in the Consignor's Weighing Receipts.

Article 20 Obligation to produce supporting documents for processing and recycling

- 20.1 The Contractor shall furnish DKR with evidence of the mechanical or feedstock recycling, or energy recovery from the plastics by presenting the completed and signed monthly WMK report and by way of the completed and signed monthly check lists, which allows the processed quantity of DSD Plastics to be related to the order numbers. For this purpose, DKR shall produce, on the basis of the prior month's monthly check list, plus the quantities of DSD Plastics delivered in the accounting month as per the transport documents, the draft of a monthly check list, and send same to the Contractor by the 10th day of each month. The Contractor is obliged to examine the accuracy of this draft and to enter or confirm the changes arising from the accounting month, indicating the order numbers. Thereafter he shall send back to DKR the original monthly check list, now examined, signed and including his entries, by no later than 5 days after receiving same. DKR shall also pay due regard to monthly check lists sent in advance by fax if the original is subsequently presented without undue delay.
- 20.2 If the Contractor, within the scope of his agreement with DKR, himself markets plastics that are not marketable products in the meaning of Article 14.2, in particular goods in bales, the procedure set forth hereinafter shall apply. Quantities subject to mandatory mass flow reporting shall be shipped only after prior material planning by DKR. The party to the recycler contract shall give DKR sufficient prior notice of the consignment. Prior to the consignment being shipped, it is to be established whether DKR is already in possession of a valid certificate for the intended recipient.

If this is not the case, the party to the recycler contract shall, before making up the consignment, present the relevant valid certificate, including the full report, to DKR for inspection. For all consignments shipped independently by the party to the recycler contract, said party shall notify DKR of the weighing receipt data via the DKR internet platform ("DKR-Operativ") within 48 hours of shipment. After shipping, DKR shall receive within four weeks the completed DKR transport document and the Consignor's and Consignee's Weighing Receipts. All transport movements done in this way by the party to the recycler contract shall be governed by the DKR transport conditions as revised from time to time.

- 20.3 If the Contractor markets the products manufactured by same both to customers engaged in mechanical recycling and customers engaged in feedstock recycling or energy recovery, the relevant quantities are to be reported to DKR in the WMK reports.
- 20.4 The Contractor undertakes to establish at the request of DKR, subject to 6 weeks' advance notice, an interface for the remote transfer of the accounting data via the internet for the purpose of settling accounts for processing or recycling. Any costs incurred by the Contractor for the change to remote data transfer shall be borne by the Contractor.

Article 21 Obligation to preserve records

Documents serving the Contractor's obligation to produce supporting documents as per Article 18 must be preserved in an orderly manner at least until expiry of the statutory preservation periods according to HGB. This also applies to the duplicates of the Consignor's Weighing Receipts, the Contractor's own consignor's, inbound and outbound weighing receipts, and the Contractor's waste weighing receipts. The consignor's inbound and outbound weighing receipts are to be sorted in ascending order by order number. If the Contractor holds copies of the transport documents, he must also preserve these, likewise sorted in ascending order by order number. The documents can also be preserved on optical recording media according to Article 257 Paragraph 3 HGB.

VI. Control rights of DKR

Article 22 Inspection and examination rights

DKR or a person authorized by same and bound to secrecy is entitled by prior appointment to inspect and examine the recycling plant within normal business hours. The period between the appointment being made and the inspection is to be not less than 48 hours unless substantial indications of serious breaches of contract exist.

D. Invoicing

Article 23 Invoicing by the Contractor

- 23.1 The Contractor shall render accounts for the remuneration payable by DKR for the performance of the Contractor's obligations as per Article 2 by completing without omission, confirming and signing the draft of the monthly check list produced by DKR according to Article 20, and sending same back to DKR by fax with the signed and stamped monthly WMK report within 5 days of receiving the forenamed draft.
- 23.2 The remuneration is payable 10 days after receipt of the complete and proper documentation according to Article 23.1. It shall be paid by crediting the relevant account, except in the case of remuneration paid by DKR to companies resident abroad.
- 23.3 DKR reserves the right to revise the remuneration system, in particular by changing to settlement via remote data transfer/internet.
- 23.4 As regards settling accounts for the DSD Plastics delivered in the final month of the contract's term, DKR shall be entitled to withhold the final payment until it is demonstrated that all the supplied DSD Plastics have been completely recycled.

E. Breaches of obligation by DKR

Article 24 Basic principles

The law concerning the sale of goods shall apply to the supply of plastic waste to the recycler. In this respect, DKR shall be subject exclusively to the contractually typical obligations of a seller as per Article 433 Paragraph 1 BGB (German Civil Code – Bürgerliches Gesetzbuch). The parties are thus acknowledging the role of DKR as being responsible only for organising the recycling of plastic waste, whose collection and sorting are performed by companies commissioned by DSD.

Article 25 Delivery of defective DSD Plastics

- 25.1 If the Contractor is entitled to reject a truck's freight, DKR shall be obliged immediately to make a subsequent delivery provided and to the extent that DSD Plastics of the relevant specification are at its disposal.
- 25.2 DKR now assigns to the Contractor all of its claims against the party contracting with DSD arising because of a detrimental variance of the supplied DSD Plastics from the specifications agreed between DKR and the parties contracting with same, or because of an assignment by DSD to DKR of such claims. The Contractor accepts this assignment. The assignment is subject to the condition subsequent of the defect being remedied by a subsequent delivery as per Article 25.1. The Contractor undertakes to assert the assigned claims only and to the extent that the supplied DSD Plastics are

at variance with the specifications agreed between DKR and the Contractor. DKR shall make every effort to assist the Contractor with the assertion of the claims.

- 25.3 In return for the assignment as per Article 25.2, the Contractor waives all his claims against DKR arising from a defect, save as provided by Article 25.4. The waiver does not apply if and to the extent that the Contractor is unable to enforce the claims assigned to same, even by legal process, because of the insolvency or demonstrated other economic inability to perform of the party contracting with DSD.
- 25.4 In their agreement of the remuneration payable by DKR, the parties have given due consideration to the risks to which the Contractor is exposed because of the exclusion of warranty and the reference to the assigned claims.

Article 26 Breach of delivery obligation according to delivery schedule

- 26.1 If DKR is responsible for underachieving the quantities according to the delivery schedule, DKR is not in default until the Contractor has given same written notice of a period of grace of not less than one week and such period has elapsed without sufficient delivery being made. In substantiated exceptional cases, DKR shall be entitled to observe a reasonable longer period of grace. DKR must notify the Contractor of such period immediately upon receiving the notice setting the period of grace.
- 26.2 For slight negligence of DKR, the Contractor's claims for compensation for each day of default are restricted to 2.50 EUR per metric ton of DSD Plastic and subject to a maximum of 50.00 EUR per metric ton of DSD Plastic.

F. Breaches of obligation by the Contractor

I. General provisions

Article 27 Basic principles

- 27.1 In view of the obligations of DSD and DKR, the recyclers' reliability and contractual fidelity are of special significance; the parties therefore provide hereinafter for special sanctions in case of breaches of obligation by the Contractor.
- 27.2 The sanctions include but are not restricted to those set forth hereinafter. Articles 631-645 and 280 et seq. BGB shall also apply.
- 27.3 The Contractor is obliged to exempt DKR from all third party claims to the extent that he himself is under obligation to DKR and/or the third party.

Article 28 Termination of recycler contract for good cause

- 28.1 DKR is entitled to terminate the recycler contract for good cause without observing a period of notice in compliance with Article 314 Paragraph 2-4 BGB if one of the reasons for termination provided hereinafter exists. A period for remedial action, to be set according to Article 314 Paragraph 2 BGB, must be reasonable and of at least four weeks' duration.
- 28.2 The right of DKR to terminate the contract for other good cause as per Article 314 Paragraph 1 BGB, shall remain unaffected.

Article 29 Suspension of deliveries

- 29.1 If a reason for termination exists, DKR shall be entitled, at the same time as or after issuing a warning notice, temporarily to suspend deliveries to the Contractor for as long as the breach of obligation persists or substantial indications exist of the danger of the breach of obligation recurring. The Contractor is to be given written notice of the suspension, which shall take effect upon receipt of such notice.
- 29.2 Further statutory rights of retention of DKR, in particular as per Article 369 HGB and Articles 320 and 273 BGB, shall remain unaffected.

II. Requirements to be satisfied by the recycling plant and the business of the Contractor

Article 30 Reasons for termination

- 30.1 Reasons for termination shall be
- (a) the absence or non-presentation of the supporting documents governed by Article 6,
 - (b) the failure to comply with the deadline for presentation of the certificates governed by Article 7,
 - (c) serious infringements, in the operation of the recycling plant, of the requirements of the Closed Substance Cycle Waste Management Act, the VerpackV, or the declaratory decisions of the federal states, paying due regard to the administration practices evolved in connection with same, or of other statutory provisions.
- 30.2 In view of the special obligations of DKR, the reasons for termination set forth in Article 30.1 entitle DKR to terminate the contract and suspend deliveries even if the Contractor is not responsible for the breach of obligation.

III. Obligation to accept and store

Article 31 Reasons for termination

- 31.1 Reasons for termination shall exist if
- (a) the Contractor twice within a period of four consecutive months accepts a substantially smaller quantity than agreed in the relevant monthly delivery schedule,
 - (b) the obligation to store and/or maintain storage space is substantially over or underachieved, unless DKR has previously approved the over or underachievement in writing.
- 31.2 The right to terminate as per Article 31.1 letter (a) shall not be subject to the condition precedent of DKR putting the Contractor in default for not accepting individual deliveries. In the event of a breach of obligation as per Article 31.1 letter (b), the temporary suspension of deliveries according to Article 30 shall not be subject to the condition precedent of the breach of obligation being sustained.

Article 32 Adjustment of Delivery Quantity

If the Contractor underachieves the delivery schedule more than once by 20 % or if delivery schedules are underachieved by a total amount of more than 40 % of a pro rata monthly quantity, DKR shall be entitled to reduce the annual quantity by an amount not exceeding the equivalent of the shortfall. The right to terminate as per Article 31.1 shall remain unaffected.

IV. Obligation to recycle

Article 33 Reasons for termination

- 33.1 Reasons for termination shall exist if the Contractor,
- (a) when recycling the DSD Plastics, persistently does not satisfy the requirements, concerning the individual forms of recycling/recovery, of KrW-/AbfG, VerpackV and the relevant administration practices, or has not recycled the DSD Plastics within six weeks of the delivery date as per the transport document,
 - (b) in the context of mechanical recycling, more than twice within a period of six consecutive months underachieves the relevant yield by 10 %, provided however that in the case of newly installed plants, the first six months after the inaugural delivery shall be disregarded,
 - (c) contrary to the contract, sells, passes on, stores or disposes of DSD Plastics that have not been consumed or recycled – and, in the case of mechanical recycling, besides DSD Plastics, also intermediate products or products not satisfying the marketable product requirements as per Article 14.2,

- (d) in the case of feedstock recycling, does not completely consume DSD Plastics in the feedstock recycling procedure,
- (e) in the case of energy recovery, does not completely consume DSD Plastics in the energy recovery process.

33.2 DKR is further entitled, as per Article 323 Paragraph 2 Clause 3 in conjunction with Article 314 Paragraph 2 Sentence 2 BGB, to terminate summarily without first issuing a warning notice and/or setting a period of grace if

- (a) for the reason for termination set forth in Article 33.1 letter (b), the yield is persistently underachieved to the extent that the goal of proper recycling in compliance with the contract must be regarded as not at all achieved, or
- (b) the breach of obligation governed by Article 33.1 letter (c) concerns substantial quantities, which shall be incontrovertibly presumed if the weight of the quantity concerned exceeds 10 metric tons, or
- (c) the breaches of obligation governed by Article 33.1 letters (a) and (d)-(f) occur in such a serious manner that the confidential relationship between DKR and the Contractor must be regarded as broken down.

V. Obligation to produce supporting documents, control rights

Article 34 Reasons for termination

34.1 Reasons for termination shall exist if the Contractor,

- (a) does not present the envisaged monthly WMK report timely,
- (b) otherwise persistently breaches his obligations, set forth in the recycler contract and the present Contract Terms, to produce supporting documents demonstrating proper acceptance, storage and recycling in compliance with the contract, and to facilitate the control rights of DKR provided in the present Contract Terms.

34.2 In the cases governed by Article 34.1, in case of persistent breaches of obligation, the contract can be terminated summarily without first issuing a warning notice and setting a period of grace if the breach of obligation is serious.

VI. Contractual penalty

Article 35 Contractual penalty

35.1 DKR can demand a contractual penalty from the Contractor if the prerequisites for termination as per Articles 30.1, 31.1 letter (a) or 33.1 are satisfied or the Contractor defaults on his obligation as per Article 8. A

contractual penalty cannot be asserted if the Contractor is not responsible for the breach of obligation giving rise to the penalty.

35.2 The amount of the contractual penalty shall be,

- in case of a reason for termination as per Articles 30.1 and 33.1 letter (b), 10.00 EUR per metric ton of the agreed annual quantity, subject to a maximum of 50,000.00 EUR for each individual violation,
- in case of a reason for termination as per Article 31.1 letter (a) or Article 33.1 letters (a) and (d)-(f), 100.00 EUR per metric ton of the relevant quantity, subject to a maximum of 100,000.00 EUR for each individual violation,
- in case of a reason for termination as per Article 33.1 letter (c), a flat rate of 1,000.00 EUR per metric ton of the relevant quantity.

35.3 The contractual penalty shall be restricted to not more than 5 % of the net turnover arising from the contract.

35.4 The contractual penalty shall count towards claims of DKR for compensation, which shall, in other respects, remain unaffected by the demand for payment of such penalty.

G. Frustration or change in inherent basis of contract, force majeure

Article 36 Termination in case of frustration of contract

In case the statutory principles underpinning the establishment and operation of the Dual System cease to exist, in particular if declaratory decisions of the federal states according to Article 6 Paragraph 3 VerpackV are revoked wholly or in material parts, DKR can terminate the recycler contract subject to four weeks' notice, to take effect at the end of a calendar quarter.

If the declaratory decision is revoked wholly or in part, the notice period starts with the public announcement of the revocation as per Article 40 Paragraph 3 of the Federal Law on Administrative Proceedings (VwVfG – Verwaltungsverfahrensgesetz); the termination shall not take effect before the revocation becomes enforceable.

The right to terminate shall not exist if the partial rescission of the declaratory decision does not concern the recycling of plastics.

Article 37 Force majeure

37.1 If a party to the contract is prevented by force majeure from performing its obligations under the present contract, such parts shall be exempted from its obligation to perform for the duration of the impediment without being obliged to compensate the other party. In particular, DKR shall not be obliged in case of force majeure to procure plastics elsewhere or to maintain stock for such an event.

37.2 Unforeseeable external circumstances beyond the control of the affected party that unreasonably impede or temporarily prevent performance shall be

deemed equivalent to force majeure. Examples thereof include industrial dispute, regulatory measures (in particular the stipulation of quotas or quantities), energy shortage, material interruption of operations, such as caused by destruction of the entire business or key departments, severe transport interruptions, e.g. arising from road blocks, industrial dispute in the transport sector, and driving bans.

H. Contractor's insurance

Article 38 Insurance

- 38.1 To cover risks, the Contractor is to take out adequate property and third party liability insurance. The existence of such cover is to be demonstrated to DKR on request by presentation of the policies and relevant evidence of payment.
- 38.2 In particular, fire insurance, including an appropriate amount of cover for decontamination, business interruption insurance, commercial liability insurance, and environmental liability insurance, encompassing both the risk arising from normal business operation and the incident risk, are to be obtained.

I. Duration, closing provisions

Article 39 Duration

The recycler contract starts at the envisaged time or else upon both parties signing same, and ends upon expiry of the contractually agreed term without separate termination being necessary. The right to terminate subject to a period of notice shall exist only if provided by the contract.

Article 40 Confidentiality

- 40.1 The parties agree to observe confidentiality, in particular concerning the amount of the agreed prices. The parties' right and obligation to disclose to the responsible authorities the information required to satisfy the objectives of the Closed Substance Cycle Waste Management Act, Article 6 Paragraph 3 VerpackV, the declaratory decisions of the federal states and the administration practices evolved in this respect, and the duties to disclose information governed by the present Contract Terms shall remain unaffected hereby.
- 40.2 Each party is obliged to coordinate its public relations activities to the extent that same impinge on the other party's interests warranting protection.

Article 41 Contractor's right of retention in respect of DSD Plastics

The Contractor shall be entitled to a right of retention only if his counter-claim has become res judicata, is uncontested, or recognised in writing by DKR.

Article 42 Applicable law, contract language

- 42.1 The law of the Federal Republic of Germany, ousting the UN Sales Conventions, shall apply exclusively to all legal relationships arising from the arrangement and performance of the recycler contract.
- 42.2 To the extent that the law concerning the sale of goods is not the governing law according to the preceding provisions, the provisions of Articles 631 to 650 BGB shall apply additionally.
- 42.3 The contract language shall be German.

Article 43 Venue

The venue for all disputes arising from the arrangement and performance of the present contract, including actions arising out of cheques and bills, excepting default action, shall be Cologne. DKR is entitled, instead, to initiate action at the seat of the Contractor's business.

Article 44 Annexes; written form

- 44.1 The annexes are an integral part of the present Contract Terms.
- 44.2. Additions and amendments to the recycler contract and the present Contract Terms must be done in writing in view of the legal significance of the two instruments. This also applies to a waiver of the written form requirement.



Der Grüne Punkt –
Dualis System Deutschland GmbH

DKR-Transport document for DSD-post consumer plastic packaging and granulates

DKR order-no: xxxxxx



Deutsche Gesellschaft
für Kreislaufwirtschaft
und Abfälle mbH

Your contact at DKR: Hans Didzoleit

Phone: +49 (2203) 9317747

Fax: +49 (2203) 9317833

Consignor-DSD-ID: xxxx DKR-ID of sender: xxxx <Company's name and address> Stock ground: Phone: Fax: Pick up date / week: Additional order no (if applicable): Information for consignor:	Consignee-DSD-ID: xxxx DKR-ID of consignee: xxx <Company's name and address> Stock ground: Phone: Fax: Delivery date / week: Contract no: Customer no. Sales order.: Date of sales order: Information for consignee:
---	---

<u>Consignee:</u> Planned amount [t]: 22 <article-ID and name> European Waste Catalogue: 19 12 04 OECD-No.: GH010 Recycling process ref. R3 (RI.91/156/EWG) <u>Acknowledgement of receipt of consignee:</u> Signature, date, stamp of consignee	<u>Forwarder-DKR-ID:</u> <Company's name and address> Phone: Fax: Delivery date / week: Transport order no. Information for forwarder: <transport distance>
--	--

<u>Details of weighing (to be filled in by forwarder)</u> <u>At consignor:</u> weighed: yes <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> no No of weighing receipt: _____ Net weight (kg) _____ Amount of bales: _____ Time stamp of net weighing: _____	Confirmation for DKR: <table border="1"> <tr> <td><u>Loading</u></td> <td><u>Unloading</u></td> </tr> <tr> <td>Location: _____</td> <td>Location: _____</td> </tr> <tr> <td>Date: _____</td> <td>Date: _____</td> </tr> <tr> <td>Time: _____</td> <td>Time: _____</td> </tr> <tr> <td colspan="2">Licence plate no: _____</td> </tr> </table>	<u>Loading</u>	<u>Unloading</u>	Location: _____	Location: _____	Date: _____	Date: _____	Time: _____	Time: _____	Licence plate no: _____	
<u>Loading</u>	<u>Unloading</u>										
Location: _____	Location: _____										
Date: _____	Date: _____										
Time: _____	Time: _____										
Licence plate no: _____											
<u>At consignee:</u> weighed: yes <input type="checkbox"/> <input type="checkbox"/> @ no No of weighing receipt: _____ Net weight (kg) _____ Amount of bales: _____ Time stamp of net weighing: _____	Signature, date, stamp of forwarding agent										

DKR Transport document issued: Cologne, <date of issuing>

The forwarder has to hand over the original of this document with the DKR balance sheet and transport invoice.

Quality inspection procedure

For lightweight packaging fractions destined for recycling, the quality of the supplied material, as required by the product specification, is to be inspected according to the following "quality inspection procedure":

1. Form of supply
 - When the consignment arrives, check that the shipping documents and weighing receipts are complete.
 - Compare the delivery advice with the delivered fraction.
 - Check the form of supply according to the specification.

In case of any doubts concerning compliance with the product specification, unload the freight before taking further action.

2. Bale labelling
 - The bales must bear a tag indicating the originating plant, fraction, production date, and the mark of the responsible person.
 - If the bales are not labelled, the consignee can attach labels at the expense of the waste management enterprise.
3. Analysis
 - Select a bale that appears to be representative of the consignment and take a sample weighing 80 to 100 kg
 - Sort the sample according to the applicable specification by:
 - portion consistent with the fraction
 - portions of individual indicated contaminants
4. Evaluation of sorted bales
 - If the first bale does not correspond to the specification, inspect a further bale according to the forenamed procedure.
 - If the second bale does not correspond to the specification, retrieve and analyse a final, third bale.
 - If a majority of the bales has to be categorised as not complying with the specification, a complaint must be issued in respect of the consignment.

A suitable record of the performed quality inspection is to be made and sent to the waste management enterprise, the recycler, the guarantor if applicable, and Duales System Deutschland GmbH (notice of complaint).

5. Determining the physiochemical parameters of the substitute fuel (intermediate) fraction
 - The parameters are to be determined by way of two ground stock samples (fraction consistent with the specification, and contaminant fraction after article analysis). The analytical values obtained from the ground stock samples are to be weighted, according to their portion by mass, and combined to form a single analytical value.

Produce the ground stock samples as follows:

- Mix the portion of the samples complying with the specification taken from all sampled bales and produce a representative sample of at least 40 kg by separation
- Separate and document the solid contaminants (photo and weight)
(Mix all other contaminants taken from all sampled bales to obtain a single contaminant sample)
(Grind and homogenise the two separate samples)

Determining the physiochemical parameters of the ground stock samples in compliance with the test specification of the Federal Quality Assurance Association for Solid Recovered Fuels (Bundesgütegemeinschaft Sekundärbrennstoffe e. V.)

A suitable record of the performed quality inspection is to be made and sent to the waste management enterprise, the recycler, the guarantor if applicable, and Duales System Deutschland GmbH (notice of complaint).

Until the complaint has been conclusively resolved, the consignment is to be blocked from processing and the test samples are to be retained.

The waste management enterprise is able to verify the proper performance and, if applicable, the result of the quality control on site and, if applicable, to have the result examined by an independent expert. The expert opinion is binding on both parties; recourse to the law shall be waived. The cost of the opinion shall be borne by the unsuccessful party.

In case of variances from the agreed product specification established mutually or by expert opinion, the waste management enterprise must rectify the goods and present the rectified goods again for acceptance.

If the waste management enterprise takes back the goods, the complaint shall be deemed accepted. All costs arising from the defective performance are to be borne by the waste management enterprise.