1 Application
The following Terms and Conditions apply to all business relations of MIMA TOOL (hereinafter referred to as: Seller) with our customers (hereinafter referred to as: Buyer). We hereby object to any conditions of our Buyers. Our Terms & Conditions apply exclusively. Terms of the Buyer opposing or deviant from these Terms & Conditions shall only become part of the contract if we explicitly approve them in advance in writing. Employees who are not authorised to represent the company are not entitled to enter into agreements that contradict our terms. Our terms and conditions apply even if we, in the knowledge of conflicting Conditions of the Buyer or ones which deviate from these Conditions, performed the service without reservation.

• The Buyer knows that the raw material supply of the Seller mainly depends on the market for commercial waste (DSD, Landbell, Interseroh) that is influenced mainly by sovereign acts. Therefore the Seller cannot guarantee that he can keep his raw material supply free from the influences of a market characterised by monopolistic/oligopolistic structures.

2 Offers, orders
The offers of the Seller are without obligation. Orders by the Buyer that qualify as offer in accordance with § 145 of the German Civil Code (BGB), can be accepted by the Seller within 2 weeks. The orders will become binding after written confirmation or service performance of the Seller. Any additions, modifications or additional agreements become effective only after written confirmation by the Seller.

3 Prices, due dates and payments
- All prices quoted are net in EURO ex works of the Seller excluding 3% Prices, due dates and payments effective only after written confirmation by the Seller. Any additions, modifications or additional agreements become effective only after written confirmation by the Seller.

- The offers of the Seller are without obligation. Orders by the Buyer

4 Make-and-hold orders
In case of agreements with partial deliveries (make-and-hold orders), the Buyer’s obligation to demand delivery presents a contractual primary obligation. Two weeks after expiry of the last date for the respective retrieval the Buyer defaults in acceptance and payment without the need for a specific reminder. After expiry of at least three retrieval deadlines the Seller can withdraw from the contract and request compensation in place of fulfilment of the complete contract.

5 Delivery time, transfer of risk
- Even without explicit agreement, the Seller is entitled to partial deliveries. Short and excess deliveries of up to 10% of the contractual quantity are acceptable. If there is an impediment of performance for which the Seller is not responsible (particularly interruptions to services of raw material suppliers) the delivery date is prolonged by the duration of such impediment. In case delivery dates are exceeded, the Buyer has to grant the Seller an appropriate grace period of at least 12 working days. Furthermore INCOTERMS 2000 apply to all dispatched goods with the exception of the EXW-Delivery, unless anything else is agreed in the present GTCs or the respective order confirmation.

- If it was agreed that the goods will be collected by the Buyer (EXW), he has to accept the goods within four weeks after the date of the order confirmation unless otherwise agreed in writing. The day and the time of the collection as well as the registration plate of the vehicle planned to be used has to be announced by the Buyer in writing at least 24 hours beforehand. The date of collection has to be confirmed by the Seller in writing as soon as possible. If the vehicle of the Buyer to collect the goods more than three hours before or after the agreed deadline, the Buyer has to pay a lump sum of € 200 - gross for the additional work. The Seller incurs additional expenditure by virtue of the additional use of material resources and personnel for the provision of the goods at a date deviating from the agreed collection date. The Buyer is at liberty to supply counter evidence for a lower additional expenditure.

- In case there is a delay in the delivery, collection or provision of the goods by the Seller or a third party due to circumstances for which the Buyer is responsible, the incurred storage costs will be charged to him after the first day of the delay calculated from the day of dispatch readiness. Any further claims or rights arising from the default of acceptance or culpable infringements of obligations to cooperate from the Buyer’s side remain unaffected.

- The risk is passed on to the Buyer when the goods are passed on to the person responsible for transport. This also applies if the Buyer pays for the transport costs. If the Buyer agrees to collect the goods, the risk will be passed on to the Buyer as the collection date expires.

- Goods that were not accepted or collected on time shall be stored at the expense and risk of the Seller.

- As a rule, reusable packaging will be taken back by the Seller, disposable packaging only subject to a written agreement.

- If the Seller defaults in delivery for reasons he is responsible for, the Buyer is entitled to demand a flat-rate default compensation amounting to 2.5%, maximum 10% of the partial or total net order. Furthermore, number 9 of these terms applies for claims for damages by the Buyer.

6 Retention of title
- The goods delivered shall remain the property of the Seller until the Buyer has settled all accounts receivable resulting from the business relation. The Seller is entitled to demand restitution of the reserved goods by the Buyer without previous withdrawal and without granting a grace period if the Buyer is in default with one of his obligations towards the Seller in the ongoing business relation. A rescission of contract can only be made in writing for such a reclaim. The Buyer has to bear the costs of the reclaim. The Seller is entitled to sell reclaimed reserved property goods after threatening to no avail and to offset the proceeds against his claim.

- By processing the reserved property goods the Seller shall acquire ownership of the products after processing if reserved property goods belonging to third parties are processed, combined or mixed, the Seller is entitled to co-ownership of the new products in the relation of the respective invoice values. If the reserved property goods are combined or mixed with material belonging to the Buyer, the Buyer hereby assigns his rights of ownership of the new product to the Seller.

- All receivables from the sale of goods that are owned or co-owned by the Seller will be assigned to the Seller by the Buyer to the extent of the Seller’s title to the property with all incidental rights and priority over the other claims, irrespective of the fact if the purchased object was sold without processing or after having been processed. In this respect any assignment to third parties is
not permitted, even within the scope of a factoring business.

- The Seller shall accept the assignment.
- The Buyer shall retain the right of recovery of the claim even after this assignment. The Seller’s right to collect the claim himself shall remain unaffected, however, the Seller commits himself not to collect such claims as long as the Buyer meets his payment obligations and other obligations. The Seller may demand that the Buyer informs him about the assigned claims and their debtors, provides him with all details required for collection and the respective documents and informs the debtors about the assignment.
- The Buyer undertakes to treat the reserved property goods carefully, to insure them against the standard storage risks at his expense and to assign the claims arising from the insurance policies to the Seller with immediate effect. If requested to do so, the Buyer will hand over the insurance policy to make any insurance claim.
- If there are any indications for any threat to the enforcement of the Seller, the Buyer has to inform the Seller immediately as soon as this becomes apparent. The Buyer is liable for all costs for the abolition of such accesses, particularly through institution of third party proceedings insofar as they cannot be attained from the third party concerned.

7 Technical and chemical details

Technical and chemical details about the item purchased and support on the use is given by the Seller to the best of his knowledge and judgement, however only as non-binding information that do not release the Buyer from his obligations of due diligence and his compliance with statutory and regulatory requirements. The details given by the Seller are to be understood as guarantee or assured characteristic only if they are denoted as such explicitly in writing.

8 Warranty for material defects

- Claims based on material defects - irrespective of their legal grounds - shall be time-barred in 12 months from transfer of risk. By way of derogation from sentence 1 the legal periods likewise apply to claims under the product liability law as well as to wilful or malicious conduct.
- Visible defects, particularly wrong or missing deliveries that exceed the permissible excess or short deliveries are to be made in writing within 7 working days after handover to the person responsible for transport prior to handling or processing the goods. The Buyer bears the burden of proofing the existence of defects at the time of passing the risk.
- The Buyer’s obligation to inspect extends to the overall delivery. Notice has to be given about hidden defects immediately, at the latest however 2 working days after they became apparent. The Seller shall be given the opportunity to inspect the rejected goods before they are modified, processed or forwarded.
- If the goods supplied show any defects the Seller is liable for, the Seller is entitled to provide subsequent fulfilment at his discretion by means of remedying the defect or replacement delivery. If the subsequent fulfilment fails, the Buyer is entitled at his discretion to declare his withdrawal from the contract or to demand a respective reduction of the purchase price (discount).
- The Seller does not assume any liability that the goods supplied by him are free from industrial property rights of third parties.
- No liability is assumed for damage caused to the purchased goods by unsuitable and improper use, wrong or negligent handling (e.g. outdoor storage) or excessive use (for example processing with temperatures exceeding 240° Celsius).
- Used delivery items or delivery items with the addition “off-spec”, “B-quality” or “seconds” are sold under the exclusion of any warranty.

9 Liability

- Unless expressly stated otherwise, the Seller’s liability is limited to damages only in accordance with the provision in number 9 of the General Terms and Conditions. The Seller shall be liable, regardless of the legal ground, for damage caused by his representatives, employees and agents by means of gross negligence or in case of breaching a material contractual duty by simple negligence. A material contractual duty is every duty the fulfilment of which is vital for the proper performance of the contract and the observation of which the buyer may regularly rely on.
- In case of negligence or gross negligence the liability is limited to typical damage that was foreseeable at the time when the contract was signed or the violation occurred.
- Any further liability for damages shall be excluded irrespective of the legal nature of the claim made. This applies particular to damage not caused to the delivery item itself as well as to claims for loss of profit or other property damage suffered by the Buyer. The liability of the Seller for an expressly guaranteed warranty, for damage in accordance with the Product Liability Act or injury to life, limb or health remains unaffected.

10 Place of jurisdiction, applicable law, final provisions

- Unless provided otherwise in the order confirmation, place of performance is the registered office of the Seller.
- The law of the Federal Republic of Germany applies, including the UN Convention on Contracts for the International Sale of Goods (CISG). In case payment against documentary credits is agreed, also the respective valid provisions of the International Chamber of Commerce (ICC) in Paris shall apply.
- The place of jurisdiction is the registered office of the Seller, whereas the Seller is entitled to also sue the Buyer at his own registered office.
- If one of the above mentioned conditions is held invalid or incomplete this will not affect the effectiveness of the other provisions. The parties agree to eliminate the invalidity or to close the gap by means of agreeing on a new provision which constitutes the closest equivalent to the economic intention of the parties.