

## **General Purchasing Conditions of the Silgan Closures Group in Germany, Issue August 2014 – English Language Version**

### **1. Scope**

1.1 The legal relation between the Supplier on the one hand and Silgan Closures GmbH or any of its subsidiaries as Purchaser on the other hand are governed by these General Purchasing Conditions and any additional agreements of the contracting parties.

1.2 General Terms and Conditions of the Supplier are excluded and shall not apply, even if in individual cases they may have been left without express objection from the Purchaser.

### **2. Purchase Orders and Calls of Delivery**

2.1 Contracts on deliveries and services (orders and acceptance) and calls for delivery as well as changes and supplements to the same must be made in writing or by the following means of telecommunication: Telefax, EMail, EDi, Web-EDi, SAP. Any oral agreements shall be effective only if they have been confirmed in writing or by one of the aforementioned means of telecommunication.

2.2 Should the Supplier not accept the order within two weeks of receiving it, the Purchaser shall be entitled to cancel free of charge. Calls for delivery are binding at the latest, if the Supplier does not object in writing within two working days after receipt.

2.3 Calls for delivery are binding with respect to the type and quantity of the called goods as well as the delivery deadline. Partial deliveries shall require the Purchaser's written agreement.

### **3. Time-limits, Consequences of Delay**

3.1 Agreed time-limits for deliveries of goods and services shall be binding. If any delays are expected or occur, the Supplier shall immediately notify the Purchaser in writing.

3.2 If the Supplier fails to deliver or perform even after lapse of an additional period of grace set by the Purchaser, the Purchaser shall without prior notice be entitled to refuse acceptance, rescind the contract or demand damages for non-performance.

3.3 The Purchaser shall be entitled to rescind the contract even if the delay was not the Supplier's fault. Additional costs for the Purchaser caused by the delay, especially the costs of substitute procurement elsewhere, shall be borne by the Supplier.

3.4 The Purchaser reserves its right to claim payment of an agreed contractual penalty for the Supplier's improper performance (§ 341 BGB – German Civil Code) until the Purchaser's final payment.

### **4. Prices**

Prices are fixed prices. They include any expenditure of the Supplier, foreseeable at conclusion of the contract made in connection with the goods and services to be provided by it.

### **5. Subsupplies, Execution, Delivery, Packaging**

5.1 The Supplier may only subcontract with the Purchaser's consent. Only the supply of standardized parts, traded on the market as exchangeable mass-products does not require approval.

5.2 All deliveries must be accompanied by a bill of delivery stating the Purchaser's prescribed order number as well as details of the type and quantity of the contents.

5.3 Deliveries shall generally include customary one-way standard packaging. If reusable packaging is used, it shall be provided by the Supplier on loan. Return of the reusable packaging shall be carried out at the Supplier's cost and risk. If as an exception the Purchaser takes over packaging costs, those costs shall be calculated a basis of verifiable net costs.

5.4 Technical equipment shall be delivered inclusive of, a technical description and instructions for use without additional charge. In case of software products, the delivery obligation shall only have been met once all the (systems and user) documentation has been delivered. Software programs which are specifically developed for the Purchaser, must also be delivered in source code.

5.5 If the Supplier carries out deliveries or services on the Purchaser's premises, the Supplier shall be obliged to observe the General Rules for Activities of External Companies on the Purchaser's Premises as well as the Instructions on Safety, Environmental and Fire Protection for Externals as issued by the Purchaser at the time of the delivery or performance.

### **6. Invoices, payments**

6.1 Invoices shall be transmitted to the Purchaser by separate mail with the indication of the order number prescribed by the Purchaser.

6.2 The payment will be performed on the basis of an individual agreement. If no agreements have been made otherwise, the payment shall be due within 30 days after complete delivery and performance and receipt of a proper invoice by the Purchaser. In case of early deliveries, the period begins at the earliest on the agreed delivery date.

6.3 The day on which payment is effected is deemed to be the day on which the Purchaser instructs its bank to release the wire transfer or on which it expedites a check to the Supplier by regular mail.

6.4 In the event of defective goods or performance the Purchaser is entitled to withhold payment proportionately to the value of the defect until the contract has been duly performed.

6.5 The Supplier may not assign to third parties any claims, which it has against the Purchaser or have them collected by third parties, without the prior written consent of the Purchaser.

### **7. Notice of Defects, Examination Costs**

7.1 At receipt of goods the Purchaser undertakes an inspection with respect to obvious defects, particularly shipping damage, variations in type and quantity of the goods. Such defects the Purchaser shall notify the Supplier immediately in writing.

7.2 In other cases the Purchaser shall give notice of any defects as soon as those are discovered.

7.3 Insofar, the Supplier waives its defense of belated notice of defects.

7.4 In case the Purchaser ships back to the Supplier defective goods the Purchaser is entitled to charge back the invoiced amount plus a processing fee in the amount of 5 % of the price of the defective good, however a maximum fee of 500,00 EUR for each return shipment.

### **8. Confidentiality**

8.1 The Supplier is obliged to keep secret all information which comes to its knowledge through the Purchaser (trade and industrial secrets, data, other technical or commercial information of any type) and shall only be allowed to use such information to the extent necessary in order to execute the contract on deliveries and services. In no way may third parties be imparted knowledge of this information; excepted from this restriction are employees of the Supplier insofar as they require this information to complete the contractual tasks for the Purchaser.

8.2 In any event, the Purchaser reserves all rights to all information provided by it. This applies in particular to copyrights, industrial property rights of all kinds as well as exploitation and usage rights. The Supplier will not apply for any industrial property right which is also based on information provided by the Purchaser without the latter's prior written consent.

8.3 The confidentiality obligations survive the contract for deliveries and services by a period of 5 years.

8.4 The confidentiality obligations shall not apply to any information which is already in the public domain, or which have come to the knowledge of the Supplier through third parties without infringement of any secrecy obligation.

8.5 To the extent the Supplier receives or stores any information in electronic form, liable to be kept confidential, it shall protect the information against unauthorized access like personal data according to the BDSG (German Federal Data Protection Act).

8.6 The Supplier shall accordingly tie its employees to confidentiality and ensure that the commitments are kept to.

8.7 The Supplier may advertise its business relationship with the Purchaser only with the latter's prior written consent.

## 9. Force Majeure

All unforeseeable, unavoidable and serious events are deemed to constitute force majeure. Force majeure shall exempt the contracting partners from their obligations for the duration of the interference and within the scope of its impact. The contractual partners are obliged to inform each other without delay in case of force majeure and to adjust their obligations in good faith to take into account the changes in circumstances.

## 10. Safety, Quality, Documentation and Environmental Protection

10.1 The Supplier must for its performance, comply with the accepted rules of science and technology, the applicable safety regulations and the agreed technical specifications. Any changes to the object to be delivered shall require the prior written consent of the Purchaser.

10.2 The contracting parties shall exchange information about the possibility of quality improvements.

10.3 The Supplier must comply with all relevant environmental legislation.

10.4 Proofs of origin requested by the Purchaser shall be provided by the Supplier with all the necessary information and properly signed, without delay. The same shall apply to supporting documents for value added tax purposes for foreign and intra EU-deliveries.

10.5 The Supplier shall inform the Purchaser without delay in the event that a delivery is subject, in whole or in part, to export restrictions under German or other law.

10.6 Suppliers from member states of the European Union are required to provide the Purchaser, unsolicited, and within 30 days of the acceptance of the order, with longterm supplier declarations in accordance with the applicable European regulation in force at such time. If this cannot be done for particular supplies of goods, the corresponding proofs of origin must be supplied at the latest with the presentation of the invoice.

10.7 The duty to observe the provisions, standards and regulations applicable as per this number 10 as well as the respective provisions, standards and other regulations in supply contracts in accordance with number 2 above constitutes an agreement on quality of the respective delivery item within the meaning of § 434 BGB.

## 11. Passage of Risk, Acceptance, Title

11.1 Irrespective of the agreed payment terms the risk passes to the Purchaser in case of delivery without installation or assembly, upon receipt at the delivery address indicated by the Purchaser, and in case of delivery with installation or assembly, upon successful completion of the Purchaser's acceptance.

11.2 Commissioning or taking into use shall not replace the Purchaser's declaration of acceptance.

11.3 The Purchaser shall acquire title to the ordered goods after payment. The Purchaser remains authorized to resell the purchased goods within the framework of a proper course of business even before the purchase price has been paid, but for such case herewith in advance declares assignment of the receivable created thereby to the Supplier. Any elongated or extended retention of title provision of the Supplier is excluded.

## 12. Defect Remedies

12.1 The deliveries of goods and services of the Supplier must be free from defects in material and title, in particular have the agreed qualities, be fit for the intended purpose and conform to the agreed quality specifications.

12.2 The Supplier undertakes to adhere to all applicable legal and governmental provisions. Its goods and services shall comply with all applicable laws within the EU, all legal regulations, decrees and standards. This also applies, without limitation, to the manufacture, labeling, transportation, importation, exportation, licensing, approvals, certifications, environmental protection and data protection, compliance with employee safety and protection laws and anti-discrimination legislation.

12.3 In case of delivery of defective goods the Purchaser is entitled before start of its production (processing or fitting), without prejudice to any of its further legal rights, as follows:

12.3.1 On Purchaser's request, the Supplier shall sort out the defective goods. To such end, the Purchaser may ship the goods back to the Supplier at the latter's cost and risk. Number 7.4 remains unaffected.

12.3.2 The Supplier is obligated to – at the option of the Purchaser – effect performance through repairing the defective goods or replacing them with

proper goods. If the Supplier cannot achieve this or if it does not comply with these obligations within reasonable cure period set by the Purchaser, the Purchaser can rescind the contract.

12.3.3 In case of urgency the Purchaser is entitled – after expiry of a reasonable cure period set by him – to remedy the defect himself or to have this carried out by a third party. Any costs arising shall be borne by the Supplier.

12.3.4 If, due to special circumstances, the Purchaser cannot set a reasonable cure period, or setting such period cannot reasonably be expected from the Purchaser, the setting of any cure period is not necessary and the Purchaser may rectify the defects itself or through a third party. Any costs arising shall be borne by the Supplier.

12.3.5 If the same type of goods has repeatedly been delivered with defects, the Purchaser has the right, after written warning, to rescind the whole contract in case of repeated delivery with defects also with effect on the scope of deliveries not yet performed.

12.4 If the defect, despite of the Purchaser fulfilling its obligations pursuant to No. 7 (Notice of Defects), is noticed only after start of its production, the Purchaser may, without prejudice to its further legal rights, demand indemnification for all expenses made for purposes of rectification, especially transport, travel, labor costs and costs of material as well as costs of disassembly and assembly. No. 7.4 remains unaffected.

12.5 Over and above this, in the framework of performance, the Supplier is obligated to compensate the Purchaser for the costs of ascertaining the defects, the cost of idleness of machines and production lines, additional handling expenses, costs of additional test runs, costs of controls of incoming goods exceeding the customary scope (e. g. laboratory examinations) and for all direct and indirect consequential damages caused by the defects. Accordingly the Purchaser is also entitled to claim compensation from the Supplier for such expenses which the Purchaser has to bear in the relationship with its customers due to the defective goods provided by the Supplier.

12.6 The warranty period for defects in material and title shall be 36 months from passage of risk pursuant to No. 11. The running of the warranty period shall be suspended during the period starting with sending the notification of defect and ending with acceptance of the proper delivery or service by the Purchaser.

12.7 Claims of the Purchaser pursuant to the Product Liability Act, torts and negotiorum gestio (Geschäftsführung ohne Auftrag) shall remain unaffected from the provisions of this No. 12.

## 13. Liability

13.1 The Supplier is liable in accordance with the legal provisions.

13.2 Notwithstanding the above the Supplier is responsible for all claims made by third parties because of personal injury or material damages caused by a defective product delivered by it and it is obligated to hold the Purchaser harmless from its liability resulting therefrom. In case the Purchaser has made material contributions to the causes of the damage (e. g. gross negligence, obvious faults) its entitlement to indemnification/hold harmless from the Supplier shall be reduced proportionately.

13.3 The indemnification and hold harmless-obligation contained in No. 13.2 shall also apply to third party-claims, made against the Purchaser resulting from violation of duties attributable to the Supplier. To the extent the Purchaser has in its turn effectively limited its liability against its customer, the liability of the Supplier is excluded.

13.4 If the Purchaser, because of the violation of legal, governmental or other provisions, especially legal safety or environmental prescriptions, takes appropriate measures with view to a product delivered by the Supplier in order to remove materialized or prevent anticipated damages,

- in case of a hazard to life or health of third persons, above all health risks to consumers and users,
  - in case of danger of a serial damage or
  - in case of danger of consequential damages,
- the Supplier shall bear all costs connected with such measures. This includes preventive service- and customer service-measures or recalls of all food packages, machines or machine parts which might be equipped with the product in question, as well as all measures to the extent voluntarily taken preventing dangers, avoiding consequential damages or safeguarding adherence to legal or other prescriptions. This also applies to such measures which are caused or taken by customers of the Purchaser.

13.5 The Purchaser shall inform and consult the Supplier in case it wishes to claim against it pursuant to the preceding provisions. The Purchaser must provide to the Supplier opportunity to examine the case of damage.

13.6 The contracting partners shall coordinate and keep each other informed about settlement negotiations.

#### **14. Industrial Property Rights and Indemnification in case of Violations of Industrial Property Rights**

14.1 The Supplier is liable for claims raised by third parties on grounds of the contractual utilization of the objects of delivery violating industrial property rights and applications for industrial property rights (hereinafter collectively referred to as "IPR"), provided at least one of the allegedly violated IPR has been published as part of the IPR family in the home country of the Supplier, by the European Patent Office or in one of the following states: Federal Republic of Germany, France, Great Britain, Austria, United States of America, Russia, South Korea, China, India or Japan.

14.2 The Supplier guarantees that no IPR opposes the contractual utilization of its supplies and services by the Purchaser and its customers. The Supplier indemnifies the Purchaser and its customers, and holds them harmless from all claims, third parties raise against the Purchaser or its customers because of a violation of an IPR caused by its deliveries or services. The Supplier in this context also reimburses the Purchaser and its customers the necessary legal costs of bringing an action and defending against an action. Over and above this the Supplier obligates itself to procure for the Purchaser and its customers a license (free of charge for the Purchaser and its customers) by operation of which the contractual utilization of the deliveries and services is safeguarded.

14.3 The foregoing provisions do not apply to the extent the Supplier has fabricated its products in accordance with drawings, models, or similar other descriptions or instructions handed over or provided by the Purchaser without the Supplier knowing or negligently failing to notice that through this IPR are violated.

14.4 To the extent the exception as per No. 14.3 releases the Supplier from liability, the Purchaser shall indemnify it and hold it harmless from the third party-claims.

14.5 The contracting parties shall keep each other informed without delay of all risks of violation of IPR becoming apparent, and alleged cases of violations, and they shall give each other opportunity to defend against corresponding claims concurrently.

14.6 The Supplier shall inform the Purchaser of all published and unpublished proprietary intellectual property rights and intellectual property right applications vesting in the object of delivery and of such IPR licensed from third parties.

14.7 If the Purchaser remunerates development results of the Supplier, through one-time payment, apportionment on the price of the deliveries and services or in any other way, the Supplier grants the Purchaser a nonexclusive, irrevocable, transferable license to such IPR unlimited as to time, place and mode of utilization, to utilize such results free of charge at its discretion in any possible way, also, to modify, to adapt and to distribute such results.

14.8 If software is delivered together with the goods, the Purchaser is granted a non-exclusive, irrevocable, transferable utilization right to such software, respectively to the delivered software components, unlimited as to time, place and mode of utilization. The utilization right also includes the right to modify and adapt.

#### **15. Utilization of Tooling, Material provided and Confidential Instructions given by the Purchaser**

15.1 Models, matrices, jigs, samples, documentation, tools and other tooling, as well as confidential instructions provided to the Supplier by the Purchaser or predominantly financed by the Purchaser remain, respectively become, the property of the Purchaser. All trademark, copyright and further industrial property rights remain with the Purchaser. The tooling and confidential instructions must carefully be stored for the Purchaser and must be returned to it upon first demand, which may at any time be made. Any retention rights of the Supplier in this respect are excluded.

15.2 The tooling and confidential instructions may only be used for the performance of the contract with the Purchaser in question; any utilization for the Supplier's own purposes or for supplies to third parties requires the prior written consent of the Purchaser.

15.3 The Supplier obligates itself to maintain the aforementioned objects, to service them and to remedy ordinary wear and tear; the necessary expenses therefore are compensated through the contractual fixed price for its deliveries and services. If, for execution of the order, the Supplier commissions a subcontractor with the fabrication of tools and samples, the Supplier herewith assigns to the Purchaser all the rights it has against the sub-supplier to the transfer of title to the tools and samples.

15.4 Material provided by the Purchaser remains its property and must be safely stored by the Supplier without charge and with the duty of care of a prudent tradesman, separate from its other affairs, clearly marked as the Purchaser's property and identified in its business records as property of the Purchaser. Such material must only be utilized for the performance of the order. Any damage to the material provided has to be compensated by the Supplier.

15.5 If the Supplier processes the provided material or if he transforms it, this is done for the Purchaser. The Purchaser shall directly acquire title to the new objects coming into existence thereby. If the provided material only constitutes a portion of the new objects, the Purchaser shall become co-proprietor of the new objects in the proportion corresponding to the value of the provided material contained therein.

#### **16. General Provisions**

16.1 The Supplier is obligated to observe the applicable legal provisions regulating the dealings with employees, environmental protection and job safety (cf. also numbers 10.3 and 12.2 of these General Purchasing Conditions) and to refrain from committing any criminal act in connection with the order. Furthermore the Supplier shall observe the principles of the Global Compact Initiative of the UN. Those relate mainly to the protection of the international human rights, the right to collective bargaining negotiations, the abolition of forced and child labor, the elimination of discrimination, the responsibility for the natural environment and the prevention of corruption. Further information on the Global Compact Initiative of the UN are available under [www.globalcompact.org](http://www.globalcompact.org). The Supplier must obligate its sub-suppliers accordingly and has to safeguard the enforcement of such standards in the supply chain. For any case of violation of the preceding principles the Purchaser reserves the right to rescind existing contracts or to terminate them (possibly without notice period). Should the Purchaser suffer damages or costs from a breach of the preceding provisions, the Supplier is obligated to indemnify the Purchaser.

16.2 Place of performance is the registered office of the Purchaser. For the delivery something different may be agreed, especially the delivery address indicated by the Purchaser case by case.

16.3 The courts at the registered office of the Purchaser shall have jurisdiction as well as all other courts having jurisdiction in accordance with the applicable law.

16.4 Should any provision of these terms and conditions and of the further agreements made, be or become invalid, the validity of the remaining provisions of the contract shall remain unaffected.

16.5 The contract shall exclusively be governed by the substantive law of the Federal Republic of Germany unless and to the extent something different has been agreed. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

16.6 These General Purchasing Conditions are written in two versions, namely in German and in English language. In case of discrepancies, contradictions or differences in interpretation, the German version shall prevail.