

## **Terms and Conditions of Purchase of the Silgan Metal Packaging Mitterdorf GmbH („Silgan“)**

Unless agreed otherwise, the following terms and conditions shall exclusively govern all commissions and orders by Silgan, including those to be concluded in the future. Validity of any general terms and conditions of business or of delivery of the supplier is waived, in particular also when notices of such terms and conditions have remained uncontested by us.

### **1. Orders:**

Only written orders are binding for us. Oral agreements are advance notices of an order and only become legally binding upon subsequent written confirmation declaring our order number. All documents relating to the order must cite our order number.

Every order is to be confirmed without delay. If we do not receive a confirmation or other response within eight days, our order is considered accepted. Changes to our order require our written agreement in order to become effective in law.

Unless agreed otherwise, prices quoted in our order are to be considered including packaging and freight prepaid to point of destination (delivery address) and are fixed prices.

### **2. Completion:**

The delivery must conform with our order in kind and quantity.

Upon acceptance of the delivery, a random sample inspection of the delivery according to DIN ISO 2859/1 (Simple random sampling scheme for normal inspection), inspection level S1, acceptance number (c)=0, rejection number (d)=1 will be carried out. If the goods do not meet the standard according to the random sample inspection detailed above, the entire delivery may be returned.

### **3. Delivery Date:**

The agreed dates of delivery must be kept, time always being of the essence in our orders. Earlier delivery is only admissible with our approval.

Partial deliveries will not be accepted if they were not demanded by us.

If a delivery is not made within the agreed period of delivery or on the agreed date of delivery, or if it is not complete, we reserve the right to rescind the order without prior notice. This does not affect our legal rights in such a case.

If the supplier can foresee that a delay will (likely) occur, written notice of this delay, including the reasons for and the expected duration of the delay, must be given immediately.

We can exercise our legal rights of default and warranty claims without prior notice.

### **4. Packaging and Freight:**

The goods are to be packaged in accordance with industry standards, appropriately and properly. Where packaging costs are charged to us, they shall at most be charged at cost.

Freight instructions given by us must be strictly adhered to. The supplier will be liable for damage occurring due to non-compliance. Postal delivery (e.g., parcels) must be dispatched full postage paid without exception. A notice of dispatch must be sent to us in all cases. Every delivery is to include a delivery notice (packing slip). If the delivery papers are missing, the delivery will be stored at the cost and risk of the supplier until the papers have arrived.

Cash on delivery shipments will only be accepted upon express agreement.

## **5. Acceptance and Warranty:**

Unless otherwise agreed, the place of destination is also the place of completion. Risk passes over to us only upon proper acceptance at the place of destination, also where carriage paid delivery was not agreed upon.

If the agreed goods and services have to be rendered or assembled at the place of completion, risk will pass over to us only after complete service or assembly and a faultless test run has been completed. In such cases, warranty periods begin only with the joint declaration of faultless operation.

Acceptance of the delivery as well as inspection of the amount, the condition, the quality and operation of the goods will take place at our plant in Mitterdorf in Mürztal, Austria. Complaints regarding defects in quantity and apparent defects in quality will be made within four weeks of acceptance. Other defects including the absence of warranted qualities or hidden defects will result in a complaint within four weeks after the discovery of the defect.

The supplier is liable for faultless quality and competent execution as well as performance-based and fail-safe operation and observance of all norms and regulations.

If the supplier is not able to remedy defects within an appropriate period, which may from case to case be set by us, we reserve the right to choose between specific performance, price reduction, provision of replacement at the supplier's cost or withdrawal from the contract regardless of the nature and extent of the defect. This does not affect our right to demand compensation for the incurred damages. The period of warranty begins anew with each improvement made.

The supplier is obliged to give notice to us of any defects discovered in the goods after delivery without delay. If any goods delivered to us prove to be faulty due to new insights, so that they can no longer be used or distributed by us, the supplier is obliged to take back all of our remaining stock at the original price of purchase.

## **6. Billing and Payment:**

Invoices are to be sent together with a duplicate or photocopy to our plant in Mitterdorf in Mürztal, Austria.

Accepted goods and services will be paid for after receipt of the invoice within 14 days less 3% discount or within 90 days without discount. The date of payment will not have any bearing on the delivery, warranty and replacement obligations of the supplier. Other conditions of payment, e.g., any conditions of payment that may be listed on the invoice, are not valid, unless they were agreed with Silgan in writing at the time of entering into the agreement.

Assignment of our liabilities is only admissible with our express approval.

## **7. Governing Law, Jurisdiction:**

Austrian law shall exclusively apply, to the exclusion of the conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.

For any legal disputes the materially responsible court in Vienna, City (Wien, Innere Stadt), Austria will have exclusive local jurisdiction. However, Silgan reserves the right to also appeal to any other locally responsible court.

## **8. General:**

The supplier holds liability that the goods delivered are not in breach of existing patents or registered trademarks. The supplier shall indemnify and hold Silgan harmless from all claims made due to a breach of patent or registered trademark rights that have arisen out of the use of the delivered goods.

The supplier further accepts the obligation to ensure that all delivered goods include the protective devices demanded by the Austrian regulations effective at the time.

All instructions, drawings, models and samples provided to the supplier by Silgan, as well as the drawings, models and samples produced by the supplier according to our instructions are and remain our (intellectual) property and may not be used for other purposes, be copied or passed on to third parties. They must be returned to us without delay upon completion of the delivery or, in case of non-performance of the delivery, immediately.

The supplier shall regard the order, the contract-related services and all related documents as trade secret and treat them with the according confidentiality.

There shall be no compensation of any kind for planning work, etc., unless expressly agreed otherwise in writing.

The business relationship must not be disclosed for purposes of advertising.

Partial ineffectiveness or partial invalidity of these terms and conditions of purchase affects neither the effectiveness nor the validity of all other terms and conditions.

## **9. Language**

The present is an English language translation of Silgan's original German language Terms and Conditions of Purchase ("Einkaufsbedingungen") which is provided for ease of reference only. The relationship of the parties shall be exclusively governed by the original German language version.