

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

## **1. Scope / Acceptance of Orders:**

These general terms and conditions of delivery shall exclusively govern all contracts between the client and Silgan, including contracts to be concluded in the future, regarding goods and services to be delivered.

All contracts between the parties as well as all commissions, offers and orders by the client are valid only upon written acceptance (e.g., order confirmation) by Silgan. Quotations by Silgan are, unless expressly stated otherwise, an invitation to make an offer and are thus non-binding until a corresponding bid on price, amount and time of delivery by the client has been accepted in writing by Silgan.

The client's purchasing conditions or other terms and conditions of the client are not binding to Silgan unless they have expressly been accepted in writing by Silgan.

Alterations or additions to the present General Terms and Conditions of Delivery are only valid if they have been agreed upon in written form.

Should the client retract for whichever reason from a legally binding offer or from an agreement that has already been agreed upon, Silgan reserves the right to demand a cancellation fee of 10% of the contract volume regardless of any proof of concrete damage done. This does not affect the right of Silgan to assert further claims over and above this amount.

## **2. Delivery Dates:**

Stipulated periods of delivery begin at the earliest on the date of receipt by Silgan of all necessary (commercial and technical) documents for the proper fulfillment of the contract. If the delivery consists of printed goods, the period of delivery will begin at the earliest with the receipt of printing permission from the client. If a specified date of delivery has been agreed upon, the period of delivery shall be the time between the signing of the agreement and the agreed date of delivery. If the named documents are not fully present at the time of the signing of the contract, the agreed date of delivery will be postponed accordingly.

Compliance with agreed periods and dates of delivery shall further depend on the client's abidance by all conditions of payment which are to be fulfilled before delivery.

Any contractual fines or liquidated damages due to non-compliance with dates or periods of delivery are ruled out.

The client must accept goods immediately. If the client delays acceptance, Silgan is entitled to store the goods at the client's expense and risk. Furthermore, the client shall have to bear all arising additional expenses and charges, such as, e.g., truck parking charges, demurrage charges, transport charges, storage charges, etc. Silgan's rights according to section 373 UGB (*Unternehmensgesetzbuch* – Austrian Commercial Code) remain untouched by this.

Silgan has the right to deliver in part deliveries, which must be accepted by the client.

## **3. Completion and Shipping:**

The applicable regulations regarding delivery and risk transfer ensue from the agreed commercial terms of the International Chamber of Commerce (INCOTERMS). Unless otherwise agreed, delivery mode FCA Mitterdorf (INCOTERMS 2010) is agreed on.

If the client delays acceptance of an order or if such an acceptance is duly to be expected on the basis of concrete evidence or if it is to be expected that the client will not or not timely or not fully fulfill its obligations (in particular payment obligations), delivery is deemed to be completed upon notice by Silgan that the goods are ready for shipment.

Silgan reserves the right to charge for all packaging materials at cost. Unless other instructions have been given by Silgan, packaging materials are non-returnable and are to be disposed of by the client. If packaging material is not charged for, it remains property of Silgan even after delivery. Silgan has the right, but not the obligation, to take back such packaging material, where the client is to return the packaging material upon request by Silgan in a clean and ready-for-use state. This procedure is expedient, e.g., with wooden pallets, cardboard pads, grid boxes and wooden frames. If such packaging material is not properly returned, it will also be charged to the client.

#### **4. Prices:**

Unless specifically agreed otherwise, the prices according to our price list valid at the time of signing are considered binding.

If the prices are not determined at the time of signing (e.g., because no price list has been issued for that time), or if the prices are subject to determination, the price for the given delivery will be based on the hitherto valid prices, where increases of the price calculation factors (notably wages, materials, energy) will result in a proportional increase of the hitherto valid prices. The client does not have to be explicitly notified of such a price increase. Such price increases do not give the client the right to retract the order.

Such increases of the price calculation factors are to be established based on the one hand on the time of the coming into effect of the hitherto valid price list and on the other hand on the time of the completion of the given order.

#### **5. Conditions of Payment:**

Invoices by Silgan are payable in Mitterdorf or in Vienna immediately upon receipt of the invoice, full net amount and exempt from charges, unless agreed otherwise. Interest according to section 352 UGB will be charged on any amounts that are not paid when due. The client shall be liable for all costs of all reminder fees and other charges connected to the collection of outstanding payments.

Upon failure by the client to make timely payment to Silgan, Silgan is entitled to make use of the right to withdrawal from the contract according to section 918 ABGB (*Allgemeines Bürgerliches Gesetzbuch* – Austrian Civil Code) also without granting a period of grace. Such withdrawal from the contract may also apply to other, not yet completed, business and resulting deliveries.

The client may only set off (compensate) claims by Silgan against counterclaims if these counterclaims were expressly acknowledged in writing by Silgan or affirmed with final and binding effect by a court.

Where there is concrete evidence for the assumption that the client will not, not fully or not timely fulfill its payment obligations, or if the client's financial situation deteriorates, Silgan shall have the right to demand security for the fulfillment of payment obligations before delivery and to withdraw from the contract in the case of refusal to do so, and to demand immediate payment of deferred payments.

#### **6. Reservation of Title:**

Silgan reserve title to all delivered goods until Silgan has received full payment for all invoiced claims. In the case of default in payment Silgan reserves the right to demand immediate return of the goods and to withdraw from the underlying contract at any time.

If the goods are processed by the client (particularly filling and closure or sealing), the resulting product passes into sole ownership of Silgan, which sole ownership passes on to the client after the complete amount of the invoice has been paid in full by the client.

Goods delivered by Silgan (including those that may have been processed) may be resold only on proviso of Silgan's ownership of the goods. Further, the client hereby transfers the claims arising out of such a resale on account of payment. Despite such transfer, the client retains the right to collect

payment for these claims until this right is revoked by Silgan. Silgan will not collect payment for such claims as long as the client properly fulfills its payment obligations to Silgan.

### **7. Warranty and Liability:**

The client must inspect the goods immediately upon delivery, at least in samples, as to defects and notify Silgan without undue delay, at the latest 14 days after delivery, of any defects. For hidden defects that could not have been detected in the course of proper inspection, notification of the defect is to be made immediately upon discovery of the defect. Beyond this, section 377f UGB shall apply.

Quantity variance up to +/- 2% as well as quality variances affecting up to 2% of the delivered goods are to be borne by the client and do not prevent the contract from being considered properly fulfilled by Silgan.

Silgan's liability for hidden defects becomes statute-barred 6 months after delivery.

Silgan will provide at its own discretion appropriate credit or replacement free of charge upon timely and justified notification of defect.

In the case of delay of payment by the client, Silgan is not obliged to remedy defects or provide credit until payment has been made.

If a delivery is produced according to instructions, drawings, designs and models by the client, the client holds full responsibility for all damage and legal consequences, including regarding patent, design and trademark law, both towards Silgan and towards third parties. In such cases, Silgan will not be liable for correct construction but only for completion according to the client's specifications.

Where the goods delivered by Silgan are packaging materials, Silgan does not warrant their usability for a specific produce. Silgan is not liable unless the client has proven that:

- a) at the time of placement of the order, the particular kind of the intended produce/content was properly considered and the processing necessary for durability was fully observed;
- b) the packaging materials were impeccably sterilized in line with the industry standard and the sterilization documentation relevant to the particular case (type of sterilization, time, duration, temperature, pressure, etc.) was submitted together with the notification of the defect;
- c) before serial use, the client tested that the packaging could be perfectly sealed with the employed sealing tools;
- d) the packaging material was stored professionally by the client, in particular dry and free of dust and dirt;
- e) this is a case of a hidden defect that could not have been detected and notified of at the time of taking over of delivery or filling, conservation or sterilization despite inspection.

### **8. Force majeure, Nonperformance:**

Silgan shall not be liable to fulfill its obligations in cases of *force majeure* for as long as the event of *force majeure* lasts. Silgan is obliged to notify the client of an event of *force majeure* immediately upon the onset of such an event. If the event of *force majeure* lasts longer than 3 months, the affected contract may be canceled with immediate effect by either party without prior notice. *Force majeure* includes in particular: (civil) war, other armed conflicts, general mobilization, terrorism, strike, lockout, business disruption, condemnation, confiscation of assets, natural phenomena, natural disasters, fire, machinery breakage, market disruption, etc.

If the circumstances under which this agreement was made alter so fundamentally that it can reasonably be assumed that the agreement would not have been reached under these altered circumstances at all or on other terms, and if such alteration of the circumstances was not reasonably to be expected at the time of entering into the agreement or could not have been influenced by Silgan, Silgan reserves the right to refuse fulfillment of the agreement or to demand an alteration to the terms of the agreement according to the altered circumstances. This pertains in particular also for cases where despite careful stock of raw materials contracted raw material

deliveries were not made to Silgan and a replacement cannot be obtained in due time and with proportional effort.

#### **9. Place of Performance, Jurisdiction and Governing Law:**

Place of performance shall be the place of dispatch.

The exclusive place of jurisdiction for all disputes arising directly or indirectly from the delivery agreement shall be Vienna, Inner City (Wien, Innere Stadt). However, Silgan reserves the right to also file suit against the client at the location of the client's registered office.

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

#### **10. Language:**

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