

**GENERAL PURCHASING TERMS &  
CONDITIONS (Ts&Cs)  
of COMPANIES OF SGL GROUP**  
(Version 04 / 2018)  
- valid as of 25.05.2018 -

**1. General**

- 1.1 Our purchase orders and contracts are exclusively based upon these Ts&Cs unless otherwise agreed in writing. Our Ts&Cs apply excluding any general terms and conditions of our Suppliers and subject to deviating agreements in writing for any current and future deliveries and services to us vis-à-vis entrepreneurs, legal entities of state-organizations or public-law-entities. They do not apply vis-à-vis consumers.
- 1.2 The then current version of these Ts&Cs at the time an order is issued is applicable.
- 1.3 Our Ts&Cs also apply if we accept or pay for supplied materials without any reservations having knowledge of contradicting and deviating terms and conditions of our Suppliers.
- 1.4 Supplementary to these Ts&Cs apply the relevant statutory provisions.

**2. Purchase order / placing of order, Open Source Software ("OSS")**

- 2.1 A purchase order or a placing of order is only legally binding if these are issued by us in writing or confirmed in writing. Deviations from the Ts&Cs require our explicit confirmation in writing. Verbally agreed conditions are not binding.
- 2.2 The respective contract shall be concluded with the content of our purchase order respectively our placing of order subject to our right to amend and/or adjust the purchase order (time of delivery, scope of order etc.), unless the Supplier expressly dissents. An objection by Supplier to a respective purchase order or placing of order is only valid upon stating explicit reasons within 5 business days after receipt of the purchase order.
- 2.3 Without our prior written consent Supplier is not allowed to integrate OSS into the delivered goods. In the context of this provision OSS means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and to use the software. The integration of OSS into the delivered goods without our prior written consent shall be deemed as a fundamental breach of the contract.

**3. Prices, packaging, invoices and payment terms**

- 3.1 The price stated in our purchase order or order document is binding. The price is net plus VAT and includes the costs according to DAP Incoterms® 2010 to the shipping address specified in the order. The VAT must be stated separately.
- 3.2 Upon our request Supplier is obligated to retract any packaging material on his own costs, without the requirement of an explicit prior proviso from our side.
- 3.3 The agreed prices include and compensate for all costs, which may occur until the fulfillment of the contractual obligation (e.g. for packaging, transport, insurance, customs clearance, installation and any taxes).
- 3.4 Auditable invoices and confirmed efficiency statements regarding fulfilled services are to be sent to us in two copies including our purchase number as well as the number of each individual item. Copies of invoices shall be marked as duplicates.
- 3.5 Unless otherwise agreed in writing, payments shall be due and payable no later than 30 (thirty) days net. If payment is made within 14 (fourteen) days, we are entitled to a 3 % (three percent) discount. The payment period shall commence as soon as any delivery or service is completed and a correctly issued invoice is received.
- 3.6 Insofar as the Supplier must provide material certificates, test records or quality control documents or any other documentation, such shall be a part of the requirements of the completeness of the delivery or performance. A discount shall also be allowed if we set off or withhold any payments to a reasonable extent on account of any deficiency.
- 3.7 Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with the contract.
- 3.8 The Supplier hereby expressly consents that any payment obligation under the contract may be fulfilled by any SGL Group company.

**4. Time limits, delivery schedules, penalty**

- 4.1 The agreed delivery, performance and completion schedules and dates are binding.
- 4.2 Where any delay in delivery, performance or completion can be anticipated, the Supplier shall notify us, respectively the ordering entity to any framework agreement, immediately in writing stating the reasons and the estimated time period of the delay.
- 4.3 If – in the event of late delivery – the Supplier cannot prove that he is not responsible for the delay, we may charge a penalty in respect of each commenced working day of delay amounting to 0.3 % but not exceeding a total of 5 % of the net contract value. In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, services or rectification, this penalty may still be claimed if the reservation of rights is made until the date of final payment. We reserve the right to claim damages in excess of the penalty in which case the penalty will be taken into account.

**5. Delivery, Foreign Trade Regulations, Import Clearance, Security of the Supply Chain**

- 5.1 Unless otherwise agreed in writing, DAP Incoterms® 2010 shall be delivered to the address stated in the order. Any shipping instructions issued by us must be observed. Delivery notes shall be enclosed in duplicate with each delivery. All shipping documents and delivery notes must indicate the contents of the shipment and must contain our order number. The freight forwarder must be informed by the supplier that we are a prohibited SVS/RVS customer.
- 5.2 Supplier is obliged to mark the ordered goods as determined for us. Only upon our prior written consent and upon our request Supplier is entitled to make use of our trademarks revocably.

- 5.3 Supplier is only upon our prior written consent entitled to have the purchase order or parts thereof executed by independent third parties.

- 5.4 Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Supplier shall advise us in writing within two weeks of receipt of the order - and in case of any changes without undue delay - of any information and data required by us to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:

- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
- the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
- the country of origin (non-preferential origin); and - upon our request - Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

- 5.5 The supplier or the freight forwarder commissioned by the supplier is only entitled to carry out the import clearance if the delivery condition DDP Incoterms® is specified in the order. If the order specifies a delivery condition other than DDP Incoterms® and we are responsible for import clearance, the supplier shall immediately provide us with all documents and other import-relevant information required for import clearance. If the supplier does not fulfil this obligation after expiry of a reasonable period, we are entitled to withdraw from the entire order or to terminate the order extraordinarily and without notice.

- 5.6 The Supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the following security aspects: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e. g. AEO, C-TPAT). The Supplier shall protect the goods and services provided to the Customer or provided to third parties designated by the Customer against unauthorized access and manipulation. The Supplier shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.

**6. Supplier Code of Conduct and Conflict Materials**

- 6.1 Supplier commits to comply with our Code of Conduct for Subcontractors and Suppliers ("SupplierCoC") available on the internet at [http://www.sglgroup.com/cms/\\_common/downloads/company/corporate-social-responsibility/SGLSupplier\\_CoC-2015\\_English.pdf](http://www.sglgroup.com/cms/_common/downloads/company/corporate-social-responsibility/SGLSupplier_CoC-2015_English.pdf). Supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights or in any child labour. Moreover, the Supplier will take necessary measures under applicable law for the health and safety of its employees during work and will use best efforts to promote a code of conduct among its suppliers which is at least equivalent to our SupplierCoC.
- 6.2 Supplier complies with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations and rules as well as any EU directives and regulations or any applicable country laws relating to "Conflict Minerals" (especially columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives including tungsten, tin, tantalum and gold if trading with them directly or indirectly finances or benefits armed groups). Supplier guarantees that the goods supplied to us are free from Conflict Minerals. Furthermore, Supplier has established an effective program to ensure that its suppliers of raw materials or goods which will be incorporated into products supplied to us will comply with the requirements of this section.
- 6.3 Supplier shall indemnify and hold us harmless from and against any third party claims which arise out of Supplier's actual or alleged noncompliance with this section 6. Supplier shall notify us promptly upon discovering or having reason to believe that any good fails to comply with the representation and warranty in this section 6.
- 6.4 Upon our request, Supplier shall provide us with certificates and other documents proving compliance of his goods with any applicable legal requirements, including those listed in this section.

**7. Transfer of risk and transfer of title**

- 7.1 In the case of deliveries with installation or assembly and in the case of work and services, the risk shall pass upon final acceptance, in the case of deliveries without installation or assembly, upon receipt at the receiving point specified by us in accordance with DAP Incoterms® 2010.
- 7.2 Transfer of title shall be upon delivery of the goods.

**8. Place of fulfillment, obligation to inspect**

- 8.1 Unless otherwise specified in the purchase order, place of fulfillment for a delivery shall be the place of receipt (delivery address), for payments Meitingen or Bonn (Germany).
- 8.2 Immediately upon receipt we will examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable deficiencies or other apparent defects in the meaning of § 377 German Commercial Code (HGB). Should we discover any deficiency in the course of these inspections we will inform the Supplier within three (3) working days.
- 8.3 Hidden defects in the meaning of § 377 German Commercial Code (HGB) will be notified to Supplier within 10 working days upon their detection.

## 9. Warranty, Last-Call Right, product- and procedure adjustments, access rights

- 9.1 The delivery has to be affected without any defects and has to comply with the then current state of art and the agreed specifications. The delivered goods have to comply with the rules of technique, the provisions of the German machine protection act, the workers associations and any other safety- and accident prevention regulations. In the event of delivery of machines, apparatus, parts and mountings Supplier in extension to any further legal liability guarantees for a period of 8.800 hours of operation the compliance of the delivered good with the specifications as well as the missing of defects, which negatively affect the operation thereof.
- 9.2 In the event of a breach of contractual obligation by Supplier we are entitled to all contractual and statutory rights. Unless the applicable statutory provisions provide for longer periods, the warranty period is 36 months. The warranty period begins to run with the transfer of risk if under the applicable law the warranty period does not start at a later point in time.
- 9.3 In the event the Supplier does not fulfil our warranty claims within a reasonable period of time or if a correction measure is not effective, we are, in addition to our statutory rights, entitled to rectify or to have rectified the defect on our own at the Supplier's cost. The same shall apply in any urgent cases, which do not provide for a waiting period.
- 9.4 In the event of long-term-supply-agreements we are entitled to rescind from the overall agreement, in the event that a defective delivery cannot be remedied within reasonable time.
- 9.5 Deviations of quantity constitute a defect. In the event of deviations in weight the measures taken from our weighing machine supersede, unless the Supplier proves that the weight calculated by him was measured correctly using commonly agreed methods.
- 9.6 Supplier with ongoing business relationship with us are required to inform us immediately in writing if they plan to reduce the production of the goods or incorporate adjustments in the composition or production procedures of the goods. Supplier undertakes to grant us the right to place a last order with reasonable quantities (Last-Call Right) prior any significant reduction in production or adjustments in the composition or production procedures of any goods supplied to us in the course of the ongoing business relationship.
- 9.7 During ordinary business hours and upon prior notice we are entitled to inspect the respective product during manufacturing or the completed product. Supplier shall arrange to provide us with access – if necessary- to the property of third parties.

## 10. Product Liability

- 10.1 To the extent Supplier is liable for a product damage, Supplier shall indemnify us from any claims by third parties upon first request.
- 10.2 Within the scope of his liability for damages under Section 10.1 Supplier is obligated to compensate for any expenses, which arise or result from a recall from our side. Any additional rights under applicable law are not affected hereby.
- 10.3 Supplier shall maintain a product liability insurance with a coverage of at least 10 Mio. EUR for each personal / property damage in general; further damage claims according to applicable law are not excluded hereby and shall apply in full in addition.

## 11. Subcontracting and assignment

- 11.1 If the Supplier subcontracts a third party without our prior written consent, we are entitled to rescind the whole or part of the contract and to claim damages.
- 11.2 Any assignment of any right or claim is only allowed with our prior written consent.
- 11.3 The Supplier hereby expressly consents to the assignment and transfer of our contractual rights to any third party.

## 12. Intellectual Property Rights

- 12.1 Supplier warrants that all delivered goods are free from third parties' rights. Supplier shall hold us harmless and indemnify us upon first request from claims by third parties for infringement of intellectual property rights and shall compensate us for all costs and expenses, which result from any third party claims, as far as the alleged infringement is not caused by our predominant fault.
- 12.2 The indemnification obligation of Supplier applies for all expenses which are incurred by us or upon claim by third parties as well as insofar any product- or liability-relevant circumstances change or threaten to change.

## 13. Provided Materials / Retention of Title

- 13.1 Title to material provided by us remains with us. Such material will be, at no cost for us, separately stored, marked as our property and the stored documents shall also be kept separately. Any processing and machining of material supplied by us shall only occur in accordance with our order. Supplier is liable for any reduction in value or loss respectively. Any processing or transformation of such materials shall at all times take place for us as the producer but the responsibility remains with the Supplier. We shall immediately become owner of the new or transformed product. Should this be impossible for legal reasons, the Supplier and we hereby agree that we shall be the owner of the new product at all times during the processing or transformation. Supplier shall keep any such product safe for us at no extra cost and in so doing exercise the duty of care of a merchant.
- 13.2 Title to and any property rights to drawings, pictures, calculations, descriptions, models, tools and all other documents and resources supplied by us vests with us. Without our express consent Supplier is not entitled to provide third parties access thereto, to disclose such by himself or through third parties or to use such on his own or through third parties by others for other than the purposes defined by us.
- 13.3 Supplier must return these items upon our request at any time to us and moreover if these are no longer required within the ordinary course of business. We reserve our

title to any other materials, tools and other supplied items. In the event these supplied items are mixed with other items irreversibly, processed or manufactured, it is agreed that we receive co-ownership pro rate from Supplier.

## 14. Confidentiality

- 14.1 Supplier shall keep any information regarding internal procedures and facilities confidential, unless these are open to the public or become public without fault of Supplier.
- 14.2 The confidentiality obligation especially applies to received or otherwise obtained documents, drawings, data and other information.
- 14.3 Moreover Supplier has to comply with the protection of mail regulations.
- 14.4 The Supplier shall safeguard that his employees and subcontractors comply with these obligations. The confidentiality obligation shall apply even after completion of the contractual obligations.

## 15. Data protection / personal data

- 15.1 The Supplier undertakes to comply with the relevant data protection regulations, in particular the provisions of the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG-neu), when providing the contractual service as the controller or contract processor. Without prejudice to the further provisions in this section 15, he is responsible for the lawful handling of personal data provided by us for the provision of the contractual services. The Supplier is also responsible for compliance with formal data protection regulations (e.g. appointment of a data protection officer, performance of a data protection impact assessment, maintenance of processing lists).
- 15.2 The Supplier undertakes to process the personal data provided by us exclusively in a lawful and transparent manner, in good faith and exclusively for the provision of services covered by the contract. Any further use of the data, in particular for the Supplier's own purposes or for the purposes of third parties, is not permitted. Furthermore, the Supplier will limit the processing in terms of content and time to the absolutely necessary extent and will ensure the accuracy of the data and their integrity and confidentiality.
- 15.3 The Supplier undertakes to take technical and organisational measures to the extent provided by the relevant data protection regulations in order to safeguard the confidentiality, availability, integrity and authenticity of the personal data provided by us. This obligation also includes measures to ensure data protection through technology (Privacy-by-Design) and data protection-friendly presets (Privacy-by-Default).
- 15.4 The Supplier undertakes to use only employees who have been made familiar with the statutory provisions on data protection and the special data protection requirements of our orders and orders through suitable measures and who, insofar as they are not already subject to appropriate statutory confidentiality obligations, have been fully committed in writing to confidentiality (formerly data secrecy) in order to provide the services covered by the contract.
- 15.5 If the processing of personal data is carried out as contract processing, the parties shall conclude a contract for contract processing in accordance with the statutory provisions of Art. 28 GDPR.

## 16. Environment and Labour protection, accident prevention and safety; Compliance with REACH/Dangerous Goods Regulations

- 16.1 Supplier shall produce the goods as far as possible under his economic and technical capabilities to the most extent environmentally acceptable.
- 16.2 Supplier must comply with any applicable regulation or provision regarding labour safety, accident prevention, safety of transport and machines (as well as our own general and plant-specific regulations) and to maintain a functioning management-system in such areas and shall provide and have available for inspection upon our request respective and sufficient documentation.
- 16.3 In addition to the aforementioned measures the Supplier guarantees that the Supplier and any of his down-stream suppliers (i) are aware of the obligations under the EC regulation on chemical and their safe use (EC 1907/2006 – "REACH") for pre-registration, registration and investigations of the respective substances, (ii) have and will at all times comply with the provisions of REACH and (iii) are sufficiently prepared to pre-register and/or register any applicable substance sold to us. The Supplier will inform us about any measures taken under REACH and especially will report, (i) which measures have been taken to comply with REACH and (ii) which substances in Suppliers products are subject to REACH (e.g. SVHC, Authorization, Restriction).
- 16.4 Should the goods contain hazardous substances, the Supplier guarantees the fulfilment of the requirements acc. to Classification, Labelling, Packaging (CLP) European Union Regulation 1272/2008, the Globally Harmonized System (GHS) and other applicable dangerous goods regulations.

## 17. Mention as Reference Customer

Only upon our prior written consent, the Supplier shall be allowed to mention us as a reference customer and/or to make reference to products or services which the Supplier has developed during the performance of a contract with us. This applies accordingly for press releases and other public announcements.

## 18. Miscellaneous

- 18.1 Unless provided otherwise by mandatory laws, the exclusive and sole place of jurisdiction for all disputes between the Supplier and us shall be Wiesbaden, Germany, or the business seat of supplier. We may also sue the Supplier at its general venue.
- 18.2 The contractual relationship between supplier and us are exclusively governed by the laws of the Federal Republic of Germany upon exclusion of the conflict-of-laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 18.3 The contracts shall remain valid, even if single provisions of the contracts are deemed to be invalid or unenforceable. The respective provision shall be amended in such way, that the economic and legal purpose is complied with as far as legally possible identically.