

# General Terms and Conditions of Purchase of SILCOMP Silikoncompounding GmbH



## 1. Quotations, Purchase Orders, Conclusion of Contracts

- 1.1. These General Terms and Conditions of Purchase of SILCOMP Silikoncompounding GmbH (hereinafter referred to as "SILCOMP" or "we") apply exclusively to companies within the meaning of Section 14 of the Bürgerliches Gesetzbuch ("BGB") [German Civil Code] i.e. natural persons or legal entities, that, in respect of the delivery of goods, are acting in the performance of their commercial or independent professional activities.
- 1.2. All your deliveries, services and quotations shall be made exclusively based on these General Terms and Conditions of Purchase. They form an integral part of all contracts which we conclude with you relating to the deliveries or services offered by you. They also apply to all future deliveries, services or quotations, even if they are not separately agreed again. Your terms and conditions or terms and conditions of third parties shall not apply, even if we do not separately object in individual cases to their validity. Even if we refer to a letter which contains or makes reference to your terms and conditions or terms and conditions of a third party, this shall not constitute any agreement with the validity of those terms and conditions. This shall also apply if these Terms and Conditions of Purchase do not include a separate provision on individual regulatory points.
- 1.3. Your quotations shall be given in writing and must describe the delivery item in full, and list in full all necessary additional products required for our safe and efficient use of the delivery item and specify their price in the quotation. Deviations from our enquiry must be indicated separately.
- 1.4. Remuneration for visits or the preparation of quotations, projects etc. shall not be granted unless expressly agreed.
- 1.5. Only purchase orders placed in writing shall be legally binding. Purchase orders placed verbally or by telephone shall only be legally valid when subsequently confirmed by us in writing. The same applies to verbal collateral agreements and changes to the contract. Purchase orders, call-offs for delivery as well as their change and modification can also be made by remote data transfer or by machine-readable data carriers.
- 1.6. If you do not confirm our purchase order in writing within 8 calendar days of receipt, we shall have the right to revocation.
- 1.7. Separate references to any deviations from our purchase order must be made in the order confirmation. Such deviations only apply if confirmed by us in writing.
- 1.8. You are required to check on your own responsibility any specifications and other technical documents provided by us in terms of their usability.
- 1.9. We can require changes to the delivery after the conclusion of the contract as well if this is necessary and reasonable for you. In the event of such a change in the contract, the effects shall be adequately considered by mutual agreement by both parties, especially regarding additional or reduced costs and delivery dates.

## 2. Prices, Shipment, Packaging

- 2.1. The agreed prices are fixed prices and exclude additional charges of any kind unless otherwise expressly agreed in writing by the parties. Any price increases shall require our written consent. Costs for packaging and transport to the shipping address resp. place of use specified by us and for customs clearance formalities and customs duties are included in the prices unless otherwise agreed in writing. The nature of pricing should not affect the agreement on the place of performance.
- 2.2. The order date, contact partner and purchase order reference number must be indicated on all delivery documents (delivery notes, consignment notes etc.), all invoices and all correspondence with us.
- 2.3. We shall take delivery only of the quantities or numbers of items ordered by us. Excess deliveries or short

deliveries shall be admissible only after previous arrangements made with us.

- 2.4. Shipment is at your own risk. The risk of any deterioration including accidental loss shall, therefore, remain with you until delivery to the shipping address resp. place of use requested by us.
- 2.5. Goods shall be packed to ensure that transport damage is prevented. Your obligation to take back packaging is determined according to statutory provisions. Packaging materials shall be used only to the extent required to achieve that purpose, without our incurring additional work costs or additional expenses. Only environmentally friendly, non-toxic, easily recyclable packaging materials should be used.

## 3. Issue of Invoices and Payment

- 3.1. Invoices must be submitted to us in due form separately and in duplicate with all relevant documents and data after delivery/service has been carried out. The amount owed shall become due only upon submission of a duly issued invoice (see also paragraph 3.2). Partial invoices shall be recognized only when expressly agreed.
- 3.2. Unless otherwise agreed in writing, payments shall be made next, within 30 days. The period shall commence upon receipt of the duly issued invoice but not before delivery of the goods at the agreed place of receipt. If certificates on material tests have been agreed, they shall form an integral part of the delivery and must be sent to us together with the invoice. The payment period for invoices shall commence upon receipt of the agreed certificates.
- 3.3. Where a delivery is defective, we shall have the right to withhold a proportionate amount of the payment until proper performance.

## 4. Delivery Dates, Default in Delivery, Force Majeure

- 4.1. The agreed delivery dates and periods are binding. Compliance with the delivery date or delivery period shall be determined by receipt of the goods at the place of receipt resp. use stated by us or the timeliness of successful acceptance. In the absence of an express agreement, the goods shall be delivered to our registered office.
- 4.2. If you recognize that an agreed date cannot be met for any reason, you must notify us in writing immediately, stating the reason and expected duration of the delay. Our claims resulting from a default in delivery (see below) remain unaffected by this.
- 4.3. If you default on delivery, we shall be entitled to legal claims (see also paragraph 4.4).
- 4.4. In the event of a default in delivery, we shall have the right in particular, if statutory provisions are fulfilled, at our option to claim damages in lieu of performance resp. to obtain a replacement from a third party or to rescind the contract.
- 4.5. Force majeure and industrial disputes shall release the respectively affected contracting party from the respective obligations to perform for the duration of the disruption and to the extent of its effect. The affected contracting party shall be obliged to the extent reasonable to give the required information immediately and to adapt its obligations to the changed circumstances in good faith. We shall be released from the obligation to accept the ordered delivery/service in whole or in part and shall have the right to rescind the contract in this respect if the delivery/service can no longer be used, considering economic considerations, due to the delay at our company caused by force majeure resp. an industrial dispute.
- 4.6. If delivery is earlier than agreed, we reserve the right to return the goods at your expense. If the goods are not returned when delivered early, the goods shall be stored at our company at your expense and risk until the delivery date. We reserve the right, in the event of early delivery, to make payment only on the agreed due date.
- 4.7. Partial deliveries shall be admissible only with our express consent.

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## 5. Guarantee, Warranty, Notice of Defects, Product Liability, Compulsory Insurance

- 5.1. You guarantee that all deliveries/services conform to the state of the art, comply with the relevant legal provisions and the regulations and guidelines of authorities, employers' liability insurance associations and trade associations. If deviations from these regulations are necessary in individual cases, you must obtain our written consent for this. This consent shall not limit your liability for defects. If you have reservations about the nature of the execution requested by us, you must inform us of this immediately in writing. In other respects, you must notify us immediately in writing if you intend to make deviations in the manufacturing process with respect to goods manufactured for us at an earlier date. Your liability for defects remains unaffected by this as well.
- 5.2. In the event of defects, we shall be entitled to full legal claims. By way of derogation from this, the warranty period is, however, 36 months.
- 5.3. Our commercial obligations to inspect and give notice of defects (Section 377 HGB [German Commercial Code]) is limited to inspection of the goods for externally visible deviations from quantity and identity, externally visible transport or packaging damage as well as random checks of the goods for their material characteristics, at least if you are obliged to carry out an outgoing goods inspection pursuant to a separate agreement (quality assurance agreement, see also paragraph 5.5). We shall notify you of any defects revealed during our inspection immediately, at the latest, within 14 days of delivery. We shall notify you of other defects immediately but at the latest 14 days after their detection.
- 5.4. You shall be obliged to indemnify us against damage claims which are asserted against us by third parties due to defects in your delivery.
- 5.5. If a claim is asserted against us for violation of official safety regulations or by reason of domestic or foreign product liability regulations or law because of the defectiveness of a product which is attributable to your goods, we shall have the right to claim compensation for this damage from you if it was caused by the goods delivered by you. Such damage also includes the cost of a recall, also precautionary, customary costs of legal defense, inspection costs, assembly and disassembly costs as well as administrative and other expenses on our part for settlement of the damage. You shall carry out quality assurance which is appropriate in nature and scope and corresponds to the state of the art and shall provide us with proof of this upon request. You shall conclude a corresponding quality assurance agreement with us if we deem this necessary. You shall furthermore insure yourself for an adequate amount against all risks arising from product liability, including the risk of recall and upon request submitting the insurance policy to us for inspection.

## 6. Property Rights and Rights of Use

- 6.1. You guarantee and warrant that all deliveries are free from third-party property rights and in particular that the delivery and use of the delivery items do not infringe patents, licenses or other third-party property rights.
- 6.2. You shall indemnify us and our customers against third-party claims from any infringement of property rights and shall also bear all costs incurred by us in this connection.
- 6.3. We shall have the right, at your expense, to obtain approval from the right holder to use the delivery items and services in question.
- 6.4. If you have own property rights to deliver goods to us, including images and certificates, we shall be granted a freely transferable right of use thereto, unlimited in time and free of charge.

## 7. Assignment of Receivables

- 7.1. Any assignment of your receivables or claims against us

shall only be possible with our prior consent but which we may not refuse without good cause.

## 8. Provision of Materials, Ownership of Other Documents, Confidentiality

- 8.1. Any materials provided shall remain our property. You shall refrain from any action which could affect our property, in particular any combining, compounding or processing shall take place only with our prior express consent.
- 8.2. Goods provided shall be stored separately in a clearly arranged manner as our property, adequately ensured against fire, water, theft and disasters at your expense and may be used only as intended.
- 8.3. Models, tools, molds, samples and drawings as well as documents provided to you shall remain our property. You undertake to hold them in safekeeping and take care of them properly and free of charge, including adequate insurance against fire, water and theft.
- 8.4. You undertake to keep confidential all information, drawings, models, tools, samples etc. provided to you and to use them only to execute our purchase orders. You may not use them for other purposes, reproduce them or make them accessible to third parties.
- 8.5. You should treat the conclusion of contracts as confidential and may refer to business relations in advertising materials only after we have granted our written consent.
- 8.6. The contracting parties undertake to treat all commercial or technical details not in the public domain, which become known to them as a result of the business relationship, as business secrets. Sub-contractors shall be accordingly bound. If one of the contracting parties recognizes that information to be kept confidential comes into the possession of an unauthorized third party or a document to be kept confidential has been lost, the party shall inform the other contracting party of this immediately.

## 9. Use of Third Parties, Data, Place of Performance, MiloG [German Minimum Wage Law]

- 9.1. You do not have the right to subcontract the order or material parts of the order to third parties without our prior written consent. We may refuse consent only in the case of good cause, especially if the third party does not have the required qualification to perform the contract properly.
- 9.2. We shall handle your personal data according to relevant data protection requirements.
- 9.3. Unless otherwise expressly agreed, place of performance is the registered office of SILCOMP.
- 9.4. You undertake to employ your employees - in particular if they are called upon to fulfil the contractual obligation towards ourselves - according to the respectively valid provisions of the MiloG, in particular to pay them the minimum wage provided for in the MiloG. Upon request, you shall prove this to us in an appropriate form. If you use the services of a third party to fulfil your contractual obligations towards ourselves, you shall be obliged to bind such third party likewise to comply with the provisions of the MiloG together with the corresponding obligation to provide proof and also to prove this to us upon request in an appropriate form.

## 10. REACH/RoHS Regulation

- 10.1. You are obliged to comply in all deliveries to us with the specifications and requirements resulting from the EU Chemicals Regulation REACH (Regulation EC No 1907/2006 of 30.12.2006) as amended (hereinafter referred to as "REACH Regulation"), in particular the relevant substances must have been registered. We are not obliged to obtain authorization under the REACH Regulation for goods supplied by you.
- 10.2. You warrant that you do not supply any products which contain substances pursuant to
  - Appendix 1 to 9 of the REACH Regulation as amended;
  - EU Council Decision 2006/507/EC of 14.10.2004

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(Stockholm Convention on Persistent Organic Pollutants) as amended;

- Regulation (EC) No 1005/2009 on substances that deplete the ozone layer as amended;
- RoHS (2011/65/EU Restriction of Hazardous Substances) for products pursuant to its scope of application.

If, in your view, there are doubts in this respect, you must notify us of this in advance immediately in writing.

- 10.3. If the delivered goods contain substances which are listed on the so-called "Candidate List of Substances of Very High Concern" ("SVHC List") pursuant to REACH, you shall be obliged to inform us of this in advance immediately in writing and to provide us with all information required by law. This shall also apply if substances hitherto not listed are included on that list in the case of current deliveries. The current status of the list is decisive. Sentence 2 of paragraph 2 above applies mutatis mutandis.

## **11. Place of Jurisdiction, Applicable Law**

- 11.1. Exclusive place of jurisdiction is the court of law competent for the registered office of SILCOMP. We reserve the right to assert our claims at the court of law competent for your registered office.
- 11.2. The contracts concluded between SILCOMP and yourself are governed by the law of the Federal Republic of Germany, to the exclusion of the Convention on Contracts for the International Sale of Goods (UN Sales Convention / CISG).

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