

SILON s.r.o.  
Planá nad Lužnicí  
Průmyslová 451  
CZ-39102 Sezimovo Ústí

## GENERAL TERMS AND CONDITIONS (PURCHASE OF GOODS)

No. 2/2019 effective from 01.07.2019

### 1. INTRODUCTION

1.1 Applicability. These General Terms and Conditions (the Terms) apply to any purchase contracts (each a Contract) between SILON s.r.o., a limited liability company with its registered office at Průmyslová 451, 391 02 Planá nad Lužnicí, Czech Republic, ID No.: 27157245 (the Purchaser) and any supplier of goods resident within or outside the European Economic Area (the Supplier). The Purchaser and the Supplier are jointly referred to as the Parties.

1.2 Priority of documents. The purchase of any goods by the Purchaser from the Supplier will be governed by (i) a contract concluded between the Parties, which must be in writing, and (ii) to the extent not governed by such contract, by these Terms; in case of a conflict, the contract will prevail over these Terms. Terms and conditions of the Supplier will not apply to the Contract unless otherwise agreed between the Parties in writing.

### 2. CONCLUSION OF THE CONTRACTS

2.1 Individual offers. This article applies to the conclusion of the Contracts through the acceptance of (i) individual purchase orders by the Supplier or (ii) offers/quotes by the Purchaser (each an Offer).

2.2 Inquiry. The Purchaser may informally inquire about the offers and price quotes for the goods. Such inquiry does not create any obligation for the Purchaser.

2.3 Conclusion of the Contract. The Contract will be created through the acceptance of the Offer by the Party to which the Offer is addressed (the Acceptance), only if:

- (a) the Offer and Acceptance is in writing;
- (b) the Offer sets out at least the quantity and quality of goods, purchase price and time of delivery of goods.

2.4 Acceptance without modifications. The Acceptance containing additions or modifications of the Offer – regardless of whether or not substantially altering the terms of the Offer – will represent a new Offer and will not constitute an acceptance of the original Offer.

2.5 No practice between the Parties. No rights and obligations of any Party under the Contract may be inferred from the practice established between the Parties or usages observed in the Purchaser's or Supplier's industry.

### 3. DELIVERY OF GOODS

3.1 Place of delivery. Unless otherwise specified in the Contract, the goods will be delivered to Průmyslová 451, 391 02 Planá nad Lužnicí, Czech Republic.

3.2 Delivery times. The Supplier must deliver the goods at the time specified in the Contract. Advance deliveries are subject to the Purchaser's prior written consent. The delivery times will not be regarded as fixed within the meaning of Section 1980 of Czech Act No. 89/2012 Coll., the civil code (Civil Code) unless otherwise agreed between the Parties in writing.

3.3 Transportation. The Supplier will deliver the goods DDP (Incoterms 2010) to the place of delivery.

3.4 Packaging. The Supplier will package the goods in a manner necessary to preserve and protect the goods, including any packaging necessary for the transport of the goods to the Purchaser. To the extent applicable to a particular type of goods, the Supplier must observe and comply with the Purchaser's guidelines for packaging and delivery of goods attached as an annex to these Terms (the Delivery Guidelines).

3.5 Documents. The Supplier will hand over to the Purchaser all documents necessary for the legal use of goods,

including any customs or public documents. In particular, the Supplier must provide to the Purchaser the documents set out in the Delivery Guidelines.

3.6 Ownership and risk. The ownership of goods and the risk of damage to goods will pass from the Supplier to the Purchaser upon the handover of the goods to the Purchaser at the place of delivery.

3.7 Refusal to take goods over. The Purchaser may refuse to take the goods over from the Supplier if they do not comply with article 6 of these Terms.

3.8 Delay in takeover. If the Purchaser is in delay with the takeover of the goods, the Supplier may not sell the goods pursuant to Sections 2126 and 2127 of the Civil Code without the Purchaser's prior written consent.

3.9 Availability of goods. If the Parties conclude a written framework contract for long-term or repeated delivery of goods, the Supplier must ensure that the goods, which are subject to such contract, remain available throughout the duration of such contract in the agreed quantities.

#### **4. PAYMENTS**

4.1 Purchase price. The purchase price for the goods will be set out in the Contract. Such purchase price will be fixed and cannot be increased following the conclusion of the Contract. The contracted price will include all transportation costs and all applicable taxes except VAT applicable in the Czech Republic, unless otherwise specified. Any payment to the Supplier via bank transfer will be considered to be made by the Purchaser on the date on which it was deducted from the Purchaser's bank account, provided that the payment instruction was correctly made by the Purchaser on the basis of the account details provided by the Supplier.

4.2 Invoicing. The Purchaser will pay to the Supplier the purchase price for goods on the basis of an invoice issued by the Supplier in compliance with the statutory requirements. The invoice must contain purchase order number and delivery note number in accordance with the Delivery Guidelines and may be sent via email to [invoice@silon.eu](mailto:invoice@silon.eu).

4.3 Due date. The Purchaser will pay the purchase price within 60 days after the later of (i) date of receipt of the invoice issued in accordance with section 4.2, or (ii) delivery of the goods. If there is a discrepancy between the due date agreed in the Contract and the due date set out in the invoice, the later due date shall prevail.

4.4 Withholdings. The Purchaser may deduct from the purchase price any amounts payable by it to the Czech tax authorities as a result of the Purchaser's statutory duty to secure income tax obligations due to the Supplier residing in a country outside the European Economic Area.

#### **5. COMPLIANCE AND INSURANCE**

5.1 Compliance. The Supplier will comply with all applicable legal regulations, the technical requirements and generally recognized standards relevant for the goods. In particular, the Supplier will comply with the Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), as amended.

5.2 Quality assurance. The Supplier will use a quality assurance system ISO 9000 or a similar system of equivalent standard.

5.3 Purchaser's right to inspect. The Purchaser will have the right to inspect the Supplier's compliance with sections 5.1 and 5.2 by way of physical inspection during regular working hours of the Supplier's facilities, equipment, material, documents and records upon its request.

5.4 Changes to the Supplier's processes. The Supplier will notify to the Purchaser in writing any changes to its contractors or manufacturing processes which could have a negative impact on the specification, quality or the performance of the goods in the Purchaser's manufacturing processes at least two months in advance of each such change. The Supplier will ensure that no goods will be delivered to Purchaser subject to any such change until the Purchaser acknowledges and agrees to that change in writing.

5.5 Insurance. The Supplier will maintain an adequate third party liability insurance covering the liability for damages (including, for the avoidance of doubt, product liability) for a minimum amount of EUR 5,000,000 per event, and will provide an insurance policy evidencing such insurance to the Purchaser without undue delay upon its request.

5.6 Solvency. The Supplier and its subsidiaries, holding companies and subsidiaries of such holding companies (each an Affiliate) will remain solvent under all laws applicable to each of them for the duration of the Contract and each perform its obligations to financial institutions in a manner which will not lead to any financial indebtedness of the Supplier or any of its Affiliates not being paid on its due date or becoming due and payable prior to its specified maturity as a result of an event of default (however described).

## **6. CONDITION OF GOODS AND DEFECTIVE PERFORMANCE**

6.1 Purchaser's requirements. The goods will be delivered in a timely manner in the agreed quantity and quality, and will comply with the specifications agreed in the Contract or the usual specifications for such type of goods (to the extent no such specifications are requested).

6.2 Factual defects and warranty. The Supplier will deliver the goods free of defects in accordance with section 6.1 and provides a 24-month warranty on the goods. The Supplier warrants that the goods will – for the duration of warranty – be eligible for the purpose for which they were intended, including their use by the Purchaser in its manufacturing processes, and that they will comply with the specifications set out in section 6.1.

6.3 Legal defects (IP infringement). The goods will not be encumbered by third party rights and will not infringe any rights of third parties, including intellectual property rights such as copyright or patents. The Supplier will reimburse the Purchaser to full extent for any payments made to third parties, and defence costs incurred, by the Purchaser in connection with claims of third parties (i) relating to their rights to the goods or (ii) based on the infringement of their rights by the goods.

6.4 Random check of goods. When taking over the goods, the Purchaser will check goods only randomly (including the checks of the quantity and quality of the goods) without any prejudice of his rights under the Contract. Any defects the Purchaser finds out following a random check, including when the goods are used or after they have been delivered to the Purchaser's customer will be regarded as latent defects.

6.5 Purchaser's claims. If the Supplier's performance is defective in any way (including non-delivery of the goods or delivery of goods in a lower quantity), the Purchaser has the right to have such defects remedied in accordance with applicable law (including repair, replacement or compensation). The choice of the claims arising from defective performance belongs to the Purchaser. The Purchaser's right to claim damages will not be limited in any way by other potential claims for defective performance.

6.6 Time limits for notifying claims. The Purchaser will notify any defects of the goods to the Supplier:

(a) within 15 days from the date on which the warranty ends pursuant to section 6.2 with respect to defects covered by the warranty; or

(b) within 6 months from the takeover of goods with respect to other defects.

## **7. LOSS AND DAMAGES**

7.1 Right to claim damages. The Supplier will be liable to the Purchaser for any loss in connection with the Contract pursuant to applicable legal provisions, in particular – but not limited to – Sections 1925 and 2913 of the Civil Code.

7.2 Monetary compensation. The Supplier must compensate the Purchaser for any loss incurred by the Purchaser in connection with the Contract in money, unless the Purchaser requests in writing that the damage be compensated by restitution (restoration to the original state, e.g. replacement).

7.3 Right of recourse in case of customer claims (foreseeability of loss). The Supplier declares and acknowledges that the Purchaser may be forced into default with fulfilling his obligations towards his customers as a result of the Supplier's default under a Contract which may result in the Purchaser's duty to pay a contractual penalty, compensate damage or provide other performance to such customer. The Supplier acknowledges that the right to claim damages in connection with the Contract includes, and that the Supplier will reimburse the Purchaser without any limitation for, any loss incurred by the Purchaser in connection with the claims of the Purchaser's customers for contractual penalty, damages or other performance, if and to the extent such customer's right arises as a result of the Purchaser's default caused by the Supplier's default; it is noted that the loss may substantially exceed the amount of the Contract value. The Supplier will provide to the Purchaser and the Purchaser's customers all co-operation necessary for the resolution of the claims of the Purchaser's customers, including reasonable access to the Supplier's premises, employees and any documents relating to the goods.

7.4 Force majeure exemptions. Strikes, lockouts or delays in transportation of goods are not considered to be the cases of circumstances excluding the liability of the Supplier for a proper and timely delivery. Any circumstances excluding the liability of a customer of the Purchaser in relation to the goods ordered by the Purchaser under a Contract will be considered as excluding the liability of the Purchaser to the Supplier under the Contract (except for the payment of the purchase price for the goods taken over by the Purchaser). For the avoidance of doubt, each Party acknowledges that no circumstance arising during a delay of a Party with the performance of its obligations will exclude its liability under

the Contract in accordance with Section 2913 of the Civil Code.

7.5 Contractual penalties. Any contractual penalty agreed between the Purchaser and the Supplier will not prejudice the Supplier's obligation to compensate the damage caused to the Purchaser in excess of the amounts paid by the Supplier as a contractual penalty. If a contractual penalty is decreased by a court, the Purchaser will have the right to claim damages in the amount exceeding the contractual penalty determined by the court without any limitation.

## 8. CONFIDENTIALITY

8.1 Duty of confidentiality. Subject to section 8.2, The Supplier must keep all commercial, technical and other information directly or indirectly relating to the Purchaser or the Contract (Confidential Information) confidential, and not disclose the Confidential Information to any third party unless required by applicable laws, for the entire duration of the Contract and for the period of 10 years following the termination of the Contract.

8.2 Use of Confidential Information. The Supplier may use the Confidential Information only within the contractual relationship with the Purchaser. The Supplier must ensure that the Supplier's employees and other persons participating in the delivery of the goods on the part of the Supplier, in particular any of the Supplier's permitted sub-contractors, maintain the duty of confidentiality in the extent under these Terms.

## 9. DOCUMENTATION

9.1 Documentation provided by the Purchaser. Any documentation provided by the Purchaser to the Supplier in connection with a Contract, including plans or calculations, will remain in the Purchaser's ownership and will be considered as Confidential Information. The Supplier will return any such documentation to the Purchaser without undue delay following the Purchaser's request.

9.2 Documentation provided by the Supplier. By delivering the goods, the Supplier will be deemed to transfer to the Purchaser the ownership right to any physical documentation provided to the Purchaser under section 3.5. If the Supplier does not own such documentation, by delivering the goods the Supplier will be deemed to grant to the Purchaser all necessary rights to use the documentation (licence) on a non-exclusive basis worldwide for all known and unknown uses for the entire duration of the relevant intellectual property rights to such documentation, including

the right to transfer or sub-licence these rights to third parties in the Czech Republic and any other country. The costs for the transfer of ownership or granting of licence is deemed to be included in the purchase price of goods under the Contract without any additional costs being incurred by the Purchaser.

## 10. TERMINATION

10.1 Termination by rescission. The Purchaser may terminate any Contract by rescission in writing:

- (a) due to a material breach by the Supplier of its obligations under the Contract;
- (b) if there are concerns based on objective reasons that the Supplier will not fulfil his contractual obligations duly and timely;
- (c) if the Purchaser does not acknowledge within 15 days a change notified pursuant to section 5.4 with respect to goods ordered from the Supplier prior to the notification of such change;
- (d) if the performance of the Contract becomes unlawful for either Party under any applicable laws;
- (e) if the Supplier or its Affiliate becomes insolvent or insolvency proceedings are commenced against the Supplier or its Affiliate under applicable laws and the Supplier does not prove that such proceedings are frivolous or vexatious within 15 days from their commencement;
- (f) any financial indebtedness of the Supplier or any of its Affiliates is not paid on its due date or becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
- (g) following the occurrence of circumstances excluding the liability of any Party for continuous period exceeding one month,

provided that the circumstances in paragraphs (a), (b) and (g) are not remedied within 7 days from the receipt by the Supplier of a written notice sent by the Purchaser; such notice will not be required if such circumstances occur more than once or continuously for a period longer than 15 days.

10.2 Effect of the termination. Termination by rescission will have immediate effect, unless otherwise stated in the termination notice sent by the Purchaser to the Supplier.

10.3 Materiality of the breach. In addition to the circumstances considered to be a material breach under the

Civil Code, the following will be considered to be a material breach of a Contract by the Supplier:

- (a) any delay in the delivery of goods by one day or more;
- (b) factual or legal defects of goods not remedied within the period notified by the Purchaser to the Supplier in writing;
- (c) the Supplier not complying with obligations under sections 5.1 or 5.2;
- (d) the Supplier not maintaining adequate insurance required under section 5.5, or the refusal of the Supplier to provide an evidence of such insurance to the Purchaser.

10.4 Loss in connection with termination. The Supplier will be liable to the Purchaser for any loss in connection with the termination of the Contract pursuant to this article 10, for the avoidance of doubt subject to the Purchaser's general duty to mitigate such loss.

## 11. GENERAL PROVISIONS

11.1 Written form. Any legal act by a Party in relation to a Contract, including the Offer and Acceptance, or an amendment of a Contract must be made in writing. The requirement for a written form will be satisfied even if the document is sent via fax, electronically or via e-mail, provided that the first name and surname of a person authorized to act on behalf of a Party is part of such message.

11.2 Non-compliance with written form requirement. Notwithstanding Section 582 (2) of the Civil Code (invalidity due to lack of form), the Parties agree that the Purchaser may object to the validity of a Contract or any amendment due to non-compliance with section 11.1 even following the payment of purchase price for goods delivered under the Contract.

11.3 Assignment by the Supplier. The Supplier may assign its claim against the Purchaser arising out of a Contract only with the prior written consent of the Purchaser.

11.4 Set-off. Section 1987(2) of the Civil Code (eligibility of receivables for set-off) is excluded in relation to any receivables arising in connection with a Contract. The Parties agree that uncertain or indeterminate receivables are eligible for set-off until an action is filed by either Party in respect of such receivable with the court or arbitral tribunal.

11.5 No mutually conditional contracts. None of the Contracts are mutually conditional on each other within the

meaning of Section 1727 of the Civil Code (conditional contracts).

11.6 Entire agreement. Each Contract constitutes the entire agreement between the Parties concerning its subject-matter and contains all particulars which the Parties regard as important for the binding nature of the Contract. No act of a Party made during the negotiations of a Contract or following the conclusion of a Contract may be interpreted in a manner contrary to the express provisions of the Contract and does not create any obligation for a Party.

11.7 Severability of void provisions. If any provision of a Contract is deemed to be void (disregarded by operation of law), the effect of such defect will be assessed accordingly pursuant to Section 576 of the Civil Code (severability of partially invalid acts).

11.8 No effects of change of circumstances. For the avoidance of doubt, both Parties are assuming the risk of change of circumstances within the meaning of Section 1765 (2) of the Civil Code in connection with each of the Contracts and any changes in commodity or other prices on the relevant markets.

11.9 Exclusion of certain Civil Code provisions. Section 557 (contra proferentem rule) and Sections 1799 and 1800 of the Civil Code (non-negotiable agreements) will not apply to any Contract.

11.10 Statute of limitations. The Parties agree to extend the limitation period in respect of their rights under each Contract to 15 years as of the moment when the limitation period commences.

11.11 Governing law. The Contract is governed by Czech law. The application of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 and conflict-of-laws rules is excluded.

11.12 Jurisdiction. If the Supplier is resident in a Member State of the European Union or a contracting party to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters dated 23 October 2007, the courts of the Czech Republic have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract or the consequences of its nullity. The local jurisdiction is determined by the Purchaser's registered office address.

11.13 Arbitration. If the Supplier is resident in a country other than as set out in section 11.12 above, all disputes

arising out of or in connection with the Contract or the consequences of its nullity will be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (the Vienna Rules) by three arbitrators appointed in accordance with the Vienna Rules. The place of arbitration will be Vienna, Austria.

The language to be used in the arbitral proceedings will be English.

# ANNEX

## DELIVERY GUIDELINES – PART A

### Documents to be provided by the Supplier to the Purchaser

- The Supplier will provide a delivery note and the inspection certificate physically upon the delivery of the goods at the latest.
- The delivery note must contain correct and accurate data (items, quantity, batch/lot and purchase order number) and has to be provided also in respect of other non-production materials or spare parts.
- When the goods are transported via a groupage transport, the delivery note must be inside the package or fixed on the package, visible and reachable for the operator, in a transport envelope or pocket.
- If a delivery note containing correct and accurate data is not available at the moment of delivery of goods, the Purchaser may refuse to accept the goods.

## DELIVERY GUIDELINES – PART B

### Marking:

Each packing unit must be labelled with the following information:

- **name of supplier - according to the purchase order**
- **type of raw material (PET flakes, chips, granulate, regranulate, agglomerate etc.)**
- **colour of delivered raw material**
- **lot number (date of production / despatch / delivery)**
- **number of big bag**
- **weight (gross weight and net weight)**

### Packaging instructions:

All the raw materials, PET flakes, chips, granulates, regranulates, grinded preforms, agglomerates etc. have to be delivered in appropriate and undamaged **big bags**, which meet the following requirements:

- **4 upper handles**
- **discharge hole: diameter min 60 cm**
- **big bags must be new, with safety factor ratio (SFR) 6:1 or 5:1**
- **big bags can be used multiple times, but only with safety factor ratio (SFR) 6:1, ie. specifically manufactured for multiple uses**
- **upper filling hoppers must not be filled**
- **maximum weight of each big bag: 1300 kg!**
- **all big bags need to be covered by plastic cover to be protected from influence of environment (weather conditions, ...)**

The goods have to be delivered on pallets with minimum high 9 cm for forks.

**Securing:**

All PET flakes/big bags have to be delivered in appropriate and undamaged way, which meet the following requirements:

- big bags have to be loaded on undamaged, proper & stable palettes (pic. 1.)
- big bags must not exceed the size of the palette (pic. 2.)
- big bags have to be secured by straps (every pair in the row) (pic. 3.)
- trailer need to be equipped by sideboards in every field (pic. 4.)
- on the rear side of the trailer have to be put minimum two struts (pic. 5.)

**Recommendation for carrier:**

After some distance, stop the truck, open the curtain and check visually if the straps are still tight with the big bags.

Each of these points are used to prevent damage during transportation and subsequent safe manipulation in our company. In case we evaluate offloading as non-acceptable and dangerous, trailer will not be offloaded.

Please make sure that your forwarder is aware.

1..



2.



3.



4.



5.



**Notification:**

If the above mentioned requirements are not respected, we may take the liberty of declining and not unloading such a truck.