

**GENERAL PURCHASING TERMS & CONDITIONS (GC)**  
**of**  
**COMPANIES OF SGL GROUP – The Carbon Company**  
(Version 08 / 2014)

**1. General**

1.1 Our purchase orders and contracts are exclusively based upon these GC. Our GC apply excluding any general terms and conditions of our Suppliers and subject to deviating agreements 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 GC at the time an order is issued is applicable.

1.3 Contradicting or deviating terms and conditions of our Suppliers do not apply, except the applicability of such are expressly agreed in writing for a certain service or a certain order.

1.4 Our GC also apply if we accept supplied materials without any reservations having knowledge of contradicting and deviating terms and conditions of our Suppliers.

1.5 As far as relevant within the individual cases, the legal provisions apply supplementary as well as for cross-border transactions the applicable INCOTERMS of the International Chamber of Commerce in Paris including the Uniform Guidelines and practices for documented letters of credit (ERA) in the then current versions.

**2. Purchase Order / Placing of Order**

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 GC require our explicit confirmation in writing. Orally agreed conditions are not

binding. Placing of orders by facsimile shall only be accepted by Supplier, if this is explicitly agreed with us and the facsimile transmission includes the agreed sender identification.

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 Supplier will comply with our change request orders regarding the ordered goods or other services in a quality and quantity assuring way after conclusion of the purchase order, insofar as this is reasonable to him and there is agreement regarding the price adjustment.

2.4 SGL retains the right to fulfill contractual payment obligations through a SGL GROUP company. The contract partner hereby expressly consents to such fulfilment by a SGL GROUP company. Any restrictions on assignment or transfer of rights for the fulfilment of payment-obligations by SGL shall not apply.

**3. Payment terms, Prices and Packaging**

3.1 The price stated in our purchase order or order document is binding. Unless agreed otherwise in writing this price includes delivery „DDP“ to the address stated in the purchase order including packaging. VAT as well as customs duties are included. VAT

shall be calculated at the rate applicable on the date of origination thereof.

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 Auditable invoices and confirmed efficiency statements regarding fulfilled services are to be sent to us including our purchase number. Supplier is liable for any consequences resulting from the non-observation of the aforementioned obligation, unless Supplier proves that he is not liable for these.

3.4 The agreed prices include and compensate for all costs, which may occur until the fulfilment of the contractual obligation (e.g. for packaging, transport, insurance, customs clearance, installation and any taxes).

#### **4. Time limits, Delivery Schedules, Breach of obligations**

4.1 The agreed delivery and completion schedules and dates are binding.

4.2 In the event a delivery- or completion date is not met by Supplier, the contracting entity, respectively the party to any framework agreement shall be informed immediately in writing upon stating the reasons and the time period of the delay.

4.3 Interruption of operation, failures of sub-contractors, shortage of energy or raw materials, traffic interruptions – as far as such interruptions are not foreseeable or otherwise inevitable, as well as labour strike, lock-outs, orders by authorities and other cases of force majeure release the party affected by such interruption for the duration and to the extent of such interruption from the obligation of delivery of acceptance. In the event of force majeure the parties shall agree on a new date for fulfilment of delivery or service. In the

event the fulfilment or the acceptance of the contractual obligation is delayed for more than one (1) month, each party is entitled upon exclusion of all other rights to rescind from the contract regarding such delayed delivery respectively the respective quantities.

4.4 During ordinary business hours and upon reasonable 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 applicable- to the property of third parties.

4.5 In the event of a breach of contractual obligation by Supplier we are entitled to all legal rights. Upon acceptance of any culpably delayed delivery or services we do not waive any rights for damages or penalties.

4.6 We are entitled to transfer any rights and claims resulting from the respective purchase order or placing of order to third parties.

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

5.1 Unless agreed otherwise in writing, any delivery shall be effected „DDP“ Incoterms 2010 to the address stated in the purchase order. Any terms of deliveries requested by us are to be observed. Any delivery shall be accompanied by two originals of delivery notes. All delivery documents and delivery notes have to describe the content of the delivery and shall include our purchase number.

5.2 Supplier is obliged to mark the ordered goods as determined for us. Only upon our prior consent and upon our request Supplier is entitled to make use of our trademarks revocably.

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

parties.

5.4 Supplier is not entitled to partial deliveries or services, unless this is not unacceptable or in breach of reasonable interests.

5.5 Supplier shall comply with all applicable export control, customs and foreign trade regulations (“Foreign Trade Regulations”) of any country with respect to the export, import or re-export from that country. 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);
- 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).

5.6 Supplier is only allowed to carry out the import clearance in our name if we provide our written approval upfront. In case Supplier carries out the import clearance in our name, the Supplier undertakes to promptly deliver us all documents and other import relevant information which he has obtained in connection with the import clearance (e.g. tax bill). If Supplier does not comply with this

obligation, even after a reasonable period of grace, we may rescind from the whole contract or extraordinarily terminate the contract without prior notice.

5.7 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. Transfer of risk**

The transfer of risk shall occur in accordance with the agreed delivery terms. If no explicit term is agreed, the transfer of risk shall occur in accordance with DDP Incoterms 2010.

## **7. Warranty and termination**

7.1 The delivery has to be affected without any defects and has to comply with the then current state of art and the agreed to specifications. The delivered goods have to comply with the rules of technique and any other safety- and accident prevention regulations.

7.2 The warranty period is 12 months starting with the acceptance, installation in our properties respectively upon risk transfer and in the event a test operation is agreed, as soon

as such test operation is completed. In the event a longer period applies under the respective law, this shall apply. In the event of delivery of machines, apparatus, parts and mountings Supplier in extension to any further legal liability shall warrant for a period of 8.800 hours of operation for the compliance of the delivered good with the specifications as well as the missing of defects, which negatively affect the operation thereof.

7.3 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 entitled to rectify or to have rectified the defect on our own. The same shall apply in any urgent cases, which do not provide for a waiting period.

7.4 In the event of long-term-supply-agreements we are entitled to rescind from the over-all agreement, in the event that at least two deliveries are in total or partially defectively executed.

7.5 Unless agreed otherwise, in the event of a long-term-supply-agreement we are entitled to terminate this agreement with a notice period of one week without cause.

7.6 Deviation 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 using commonly agreed methods. The period to notify and check for deficiencies is at least 14 business days. We are entitled to notify visible deficiencies within 1 month after receipt of the delivered good to our plant, non-visible deficiencies within 1 month after detection thereof.

## **8. Product Liability**

8.1 To the extent Supplier is liable for a product damage, Supplier shall indemnify us from any claims by third parties upon first

request.

8.2 Within the scope of his liability for damages under Section 8.1 Supplier is obligated to compensate for any expenses, which arise or result from a recall from our side. Any claims under legal provision are not affected.

8.3 The Supplier must have and maintain adequate insurance including, worker's compensation, property insurance and product damage insurance upon such terms and for such amounts as would be reasonably prudent having regard to the terms of the purchase orders and contracts. The terms and amounts of insurance may be specified and agreed by both parties.

## **9. Intellectual Property Rights**

9.1 Supplier warrants that all delivered goods are free from third parties' rights. Supplier shall indemnify us upon first request from claims by third parties for infringement of intellectual property rights and shall compensate for all costs, which result from any infringement, as far as these are not based on wilful acts or gross negligence of the Supplier.

9.2 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.

## **10. Supplied Materials / Retention of Title**

10.1 Title to material supplied by us remains with us. Such material will be stored by Supplier without costs, marked as our property, stored separately and the store documents shall also be 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 machining at all times shall only occur with us in the position of producer, but with no obligation to do so. Any processed material shall be handled by Supplier for us until transfer. Our property shall remain as co-property in the processed goods.

10.2 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. Supplier without our express consent 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.

10.3 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.

## **11. Confidentiality**

11.1 Supplier shall keep any information regarding internal procedures and facilities confidential, unless these are open to the public.

11.2 Moreover supplier has to comply with the protection of mail and data protection regulations.

11.3 The confidentiality obligation applies also for received or otherwise obtained documents and other information.

11.4 In addition supplier shall provide that his employees and potentially contracted subcontractors shall comply with these obligations. The confidentiality obligation

shall apply even after completion of the contractual obligations.

11.5 The Parties agree that mutually disclosed personal transmission data of the respective other party may be stored and processed, as far as legally permitted under applicable law.

## **12. Labour protection, accident prevention and safety; Product- and procedure adjustments**

12.1 Supplier shall provide the contractually agreed goods as far as possible under his economic and technical capabilities to the most extent environmentally acceptable.

12.2 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 or respectively have available for inspection upon our request respective and sufficient proof documentation.

12.3 In addition to the aforementioned measures, the Supplier guarantees that the Supplier and any of his down-stream suppliers are aware of and shall be obliged to the obligations under all PRC laws and regulations with respect to environment conservation and their safe use of the respective substances.

12.4 Supplier with ongoing business relationship with us are required to inform us at the earliest point in time, if they plan to incorporate adjustments in the goods or procedures regarding the goods or services supplied to us.

## **13. Miscellaneous**

13.1 Unless otherwise specified in the

purchase order, place of fulfilment for a delivery shall be the place of receipt (delivery address), for payment Shanghai, Yangquan China.

13.2 Any dispute arising from or in connection with both parties Contracts shall be submitted to China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The seat of arbitration shall be in Shanghai.

13.3 The contractual relationship between supplier and us are exclusively governed by the laws of China.

13.4 The contracts shall remain valid, even if single provisions of the contracts are deemed to be invalid. The respective provision shall be amended in such way, that the economic and legal purpose is complied with as far as possible identically.

13.5 Both supplier and SGL undertake and guarantee not to receive, give or take any commissions, payments, gifts, kickbacks, lavish or extensive entertainment or other things of value to or from any employee or agent of the other party in connection with any purchase orders and acknowledge that the giving or receiving of any such payments, gifts, entertainment or other things of value is a strict violation of this GC and may result in the recession of this GC and relevant purchase orders and contracts, which will lead to the claim of any and all damages arising thereof. Each party shall notify the other party's management of any such solicitation by employees of either party.