

## General Terms of Sale and Delivery

### § 1 Scope of application:

(1) The following conditions apply to all deliveries and services of SILBERPFEIL. These conditions also apply to future transactions.

(2) No contradictory terms and conditions, in particular purchasing conditions of the customer shall apply.

(3) An amendment of these terms and conditions shall require the written form. An order or acceptance of delivery is in all cases considered to be an acceptance of the terms and conditions.

### § 2 Offer, acceptance, order confirmation:

(1) The offers from SILBERPFEIL are non-binding.

(2) SILBERPFEIL accepts orders by means of written confirmation. If SILBERPFEIL'S order confirmation deviates from the terms and conditions of an order, the transaction is subject to SILBERPFEIL'S conditions unless the customer lodges a written objection immediately after receipt of the order confirmation.

### § 3 Price:

(1) All prices are net prices ex works. Unless otherwise agreed, the applicable prices are the prices on the date of delivery.

(2) If prices have been agreed and the costs that the prices are based on change, SILBERPFEIL has the right to adjust the prices to reflect that cost change.

(3) If the delivery is made at a later time due to reasons in the customer's control, SILBERPFEIL has the right to increase the prices accordingly to compensate for higher costs. SILBERPFEIL'S right to restitution of any other damages caused remains unaffected.

(4) All taxes, customs and excise duties that the customer is required to pay are to be borne by the customer itself unless SILBERPFEIL has expressly committed itself in writing to assume these costs.

### § 4 Place of fulfillment, delivery:

(1) The place of fulfillment is the respective SILBERPFEIL warehouse.

(2) The delivery shall be performed ex works place of fulfillment in line with Incoterms in the applicable version at the conclusion of the contract. Shipping and transport are therefore at the customer's expense and risk. As soon as delivery is offered to the customer at the place of fulfillment, all risks are transferred to the customer. If the customer does not accept the delivery, he/she is in acceptance arrears. In addition, SILBERPFEIL'S delivery is deemed as having been fulfilled and SILBERPFEIL has the right to store the goods at the cost of the customer. Any resulting costs must be reimbursed to SILBERPFEIL promptly.

(3) SILBERPFEIL has the right to make partial deliveries. The terms and conditions shall apply to these in their entirety.

(4) In case SILBERPFEIL cannot make a delivery on the agreed date due to unforeseen circumstances not under its control (force majeure,

delivery delays on the part of suppliers, etc.), SILBERPFEIL has the right to make the delivery on the next

possible date as long as acceptance of the delivery is still reasonable to the customer at that point of time. Otherwise SILBERPFEIL has the right to withdraw from the contract. SILBERPFEIL is only liable for any other delivery delay in case of its own gross negligence and intent.

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(5) A non-issued import license does not exempt the customer from its obligations

### § 5 Warranty and liability:

(1) SILBERPFEIL warrants that the goods conform to the agreed specifications and the applicable mandatory legal requirements for the goods in the European Union. SILBERPFEIL warrants that the goods can be sold in Austria. The customer must clarify him/herself whether the goods can be sold within and outside of the European Union (such as food legislation, labeling provisions).

(2) SILBERPFEIL gives no warranty for damages that are attributable to improper storage, care, use or transport. In case of a claim for such damage, the customer must prove the proper storage, care, use or transport. Unless otherwise indicated on the packaging of the goods or in the commercial documents, proper storage etc. means that the goods are stored and transported in a clean, dry place with predominantly normal room temperature and not in the open.

(3) SILBERPFEIL gives no warranty for information about products in catalogues, advertising messages, brochures, menus or lists of beverages, etc.

(4) The customer has to inspect the goods carefully at acceptance and make a complaint about any damages within 5 working days in writing with remittance of a sample of the defective product or other proof (such as a photograph), failing which any claims, even those due to consequential damages are excluded. On the request of SILBERPFEIL, the customer must facilitate and tolerate the inspection by an appraiser from SILBERPFEIL or a third party appraiser named by SILBERPFEIL. If a deficiency is claimed in a timely manner and if it is inspected by an appraiser in case SILBERPFEIL request this, SILBERPFEIL shall remedy the deficiency at its own option by means of improvement or replacement, take back the deficient goods against a credit note of the purchase price or by means of a price reduction. The customer shall have no other claims.

(5) The warranty period corresponds to the minimum shelf life and starts when the goods are offered to the customer at the fulfillment place.

(6) The customer does not have the right to withhold payment due to warranty or other claims of whatever type.

(7) SILBERPFEIL shall not be liable for damages in case of slight or plain gross negligence. SILBERPFEIL is not liable for consequential damages, in particular lost profits.

(8) Return of defective goods requires expressed prior consent of SILBERPFEIL and is performed at the expense and risk of the customer. The customer shall also bear any secondary expenses incurred due to the return (such as storage, demurrage for rail or container). If goods are returned without prior consent, SILBERPFEIL has the right to refuse acceptance of the goods and to send these back to the customer at the customer's expense.

(9) Samples may deviate in quality and packaging from the delivery.

#### **§ 6 Retention of title:**

(1) Ownership of the delivered contractual goods shall remain with SILBERPFEIL (reserved goods) until fulfillment of all of the customer's obligations, in particular complete payment of the purchase price.

(2) The customer shall have the right to resell the reserved goods. This right expires if the customer gets into arrears with payment or if it has worries that it cannot pay SILBERPFEIL the entire amount due on the due date.

(3) If the reserved goods are resold by the customer, it already now shall assign all existing claims arising from the sale or other exploitation to SILBERPFEIL up to the level of the purchase price claim of SILBERPFEIL. The customer warrants to note this assignment in its books. The customer has the right to collect these assigned claims for payment under its own name until the right is revoked. The customer is obligated to reserve its title to the goods under reserve if the reserved goods are sold on account.

(4) The customer shall assign any arising insurance or damage claims due to destruction or damage of the reserve goods to SILBERPFEIL.

(5) Hypothecation and assignment of the reserve goods is not permitted.

#### **§ 7 Payment and default:**

(1) The place of fulfillment of the payment is the head office of SILBERPFEIL.

(2) The purchase price must be paid according to the invoice and in the respective currency at SILBERPFEIL.

(3) If the payment is not made by the due date, SILBERPFEIL has the right:

- to delay its obligations until the outstanding payment has been made,
- to avail itself of a reasonable extension of the delivery or service time,
- to declare the entire open payment due,
- to invoice all of the warning and collection costs as well as the statutory default interest,

- or in case of non-compliance with a reasonable deadline to withdraw from the contract, which SILBERPFEIL is also entitled to in case of partial payment, by declaring withdrawal from the entire contract. If SILBERPFEIL withdraws, the customer shall pay an immediate 10 % of the price as cancellation fee and to reimburse the additional damage and lost profit.

(5) If an execution of a judgment is enforced on the customer's assets, or if an ability to pay SILBERPFEIL is doubtful, SILBERPFEIL has the right:

- to demand all claims regardless of their due date immediately,
- to hold back all deliveries from not yet fulfilled contracts and to deliver only against pre-payment.

If the customer refuses to make pre-payment, SILBERPFEIL can withdraw from the contract and claim damages for lost profit as well.

(6) If the customer defaults acceptance of goods, the payment becomes due immediately.

(7) Payments are also credited against the oldest payable and the resulting interest payments and costs even in case of a contrary clause.

(8) The agreed payment terms apply to credit notes for containers. Such credits will not be booked until these payment dates.

#### **§ 8 Jurisdiction and applicable law:**

(1) All legal relations between SILBERPFEIL and the customer are subject to Austrian substantive law. The UN Sales Convention shall be excluded.

(2) The exclusive jurisdiction for disputes in the scope of applications is Salzburg, Austria. For all cases outside of the scope of applications, the jurisdiction shall be agreed to be the International Court of Arbitration of the Austrian Economic Chamber in Vienna. The place of arbitration is Vienna, Austria. The arbitration language is German. If the contract is written in a language other than German, the arbitration language shall be English. However, SILBERPFEIL shall have the right in all cases to enter a claim against the customer in another competent court.

#### **§ 9 Concluding provisions:**

(1) The customer does not have the right to offset any claims against SILBERPFEIL against payments due to SILBERPFEIL.

(2) The customer does not have the right to assign its claim for delivery of goods to a third party.

(3) Contestation of a contract due to an error of the customer is excluded.

(4) Documentation or information about SILBERPFEIL, its products, sales partners or other customers that are made available to the customer or which it has acquired elsewhere may only be disseminated or made available otherwise to third parties, in particular to competitors of SILBERPFEIL, after written consent by SILBERPFEIL.

The same applies to documentation such as samples, cost proposals, promotional material, price lists, listing agreements or contracts that were provided to the customer or which it has acquired elsewhere. All rights of these documents belong to SILBERPFEIL.

(5) The containers made available to the customer (reusable containers inclusive of chep-pallets and pallets etc.), the promotion material and articles made available to the customer as well as the fixtures for sales locations (such as coolers) remain the property of SILBERPFEIL and must be returned to SILBERPFEIL for any reason whatsoever including the end of the business relationship unsolicited and the customer's expense. This also applies in the case that an insolvency procedure is opened against the customer's assets.

(6) During delivery of exchangeable pallets, SILBERPFEIL shall take back pallets of the same or better quality. If no equal quality pallets are returned by the customer, SILBERPFEIL shall bill the exchange pallets to the customer at the applicable price.

(7) If provisions of this contract are invalid or unenforceable, the rest of the contract remains unaffected. These invalid or unenforceable provisions are deemed to be replaced by valid and enforceable provisions that come as close as possible to the intended economic purpose (severability clause).

(8) If a contract is written in German and another language, the German text shall be decisive for the interpretation of the contract and these provisions.