

Sibelco Terms and Conditions of Sale

V. 1-9-2020

1. Definitions

The following definitions and rules of interpretation shall apply:

- (a) **Seller:** means the legal entity of the Sibelco Group providing the Document.
- (b) **Buyer:** the individual, company, firm, partnership or other legal entity who has bought, or agreed to buy, the Goods.
- (c) **Delivery Date:** the date specified for delivery in the Order or as otherwise stated by the Seller.
- (d) **Document:** means the offer, quotation, price list, order confirmation, invoice for the sale of Goods.
- (e) **Goods:** any item sold by the Seller.
- (f) **Insolvency Event:** the Buyer becoming insolvent, entering into receivership, administration or liquidation, suspending or ceasing, or threatening to suspend or cease, carrying on its business (or any part of it), a resolution being made in connection with the winding up or dissolution of the Buyer, or any event occurring in any jurisdiction to which the Buyer is subject that has an effect equivalent or similar to any of the above.
- (g) **Order:** an order placed by the Buyer and accepted in writing by Seller or otherwise deemed accepted upon delivery of the Goods in accordance with clause 2(b) below.
- (h) **Sibelco Group:** means a worldwide material solutions company with SCR-Sibelco NV as ultimate parent company and its subsidiaries.
- (i) The word "**including**" will be deemed to be followed by the words "without limitation".

2. Order of Goods

- (a) The Buyer may submit a proposed order to the Seller verbally or in writing. Such proposed order shall be deemed to be an offer by the Buyer to purchase Goods in accordance with these terms. The Buyer shall be responsible for the accuracy of each proposed order.
- (b) The Seller shall be entitled to reject any proposed order without reason. Each proposed order shall only be deemed accepted once confirmed in writing by the Seller or, if earlier, when the Goods are delivered to the Buyer (in whole or in part). Upon the Seller's acceptance, a contract shall be formed incorporating these terms and the terms of the Order (**Contract**). Any terms specified in the Seller's written confirmation of the Order shall take precedence over these terms in the event of a conflict.
- (c) The terms of the Contract supersede all other terms and apply to the sale of Goods to the Buyer to the exclusion of all other terms. Any quotation or other document addressed to the Buyer by the Seller is not an offer to supply the Goods and shall not form part of the Contract. All descriptions and statements contained in the Seller's catalogues, technical data sheets, price lists, analysis, other documents and samples are approximate only and shall not form part of the Contract or give rise to any liability for the Seller unless expressly stated otherwise in the Contract.
- (d) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements and understandings between them, whether written or oral, relating to its subject matter. No modification or amendment of these terms will be binding unless agreed to in writing by the Seller.
- (e) Subject to clause 8(c), the Buyer acknowledges it does not rely on, and shall have no remedies in respect of, any statement representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

3. Price and payment

- (a) The price payable for the Goods will be as set out in the Order (or the acceptance of the Order) or, if no price is stated in the Order, the price shall be as set out in the Seller's price list in force as at the Delivery Date (available to the Buyer upon request).
- (b) The price excludes value added tax and any other tax, duty or levy relating to the manufacture, transportation, export, import, sale or delivery of the Goods and excludes costs for delivery, insurance, packaging, sorting, calibration, analysis and inspection. Such costs and taxes shall be invoiced to the Buyer.
- (c) Prices are subject to change, at the Seller's discretion, prior to delivery, in the event of any factor beyond the Seller's control (including change in applicable laws, increases in taxes and duties, foreign exchange fluctuations, increases in supply costs, delay caused by the Buyer and/or any change to the Order requested by the Buyer) and/or a genuine mistake by the Seller.
- (d) Invoices shall be issued on or after delivery and shall be payable within 30 days of the invoice date by electronic bank transfer to the account and in the currency stated on the invoice. Any queries must be raised with the Seller in writing within 10 days of receipt. The Seller may require payment on account in advance of delivery.
- (e) Interest will be charged on overdue sums both before and after any court judgment at rate of 2% per annum above the European Central Bank interest rate on main refinancing operations. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Buyer shall pay the interest together with the overdue amount and all costs and expenses incurred by the Seller in collecting such sums from the Buyer.
- (f) Time for payment is of the essence. If the Buyer enters into (or becomes

reasonably likely to enter into) an Insolvency Event or if the Buyer fails to pay any amount on the due date for payment, the Seller may, without liability, suspend delivery or performance of any Order (or any part of it or instalment) not yet fulfilled and refuse to accept any further proposed orders from the Buyer.

- (g) The Buyer shall pay all amounts due in full without any deduction, set-off, counterclaim or withholding, unless a deduction or withholding of tax is required by law (in which case the Buyer shall pay such sum to ensure the Seller receives the full amount invoiced). The Seller may at any time, without limiting any other rights or remedies, set off any amounts owing to it by the Buyer against any amounts payable to the Buyer and shall be entitled, at its sole discretion, to apply payments received from the Buyer against any outstanding invoices in the Seller's order of preference.

4. Delivery

- (a) Unless otherwise stated in the Order, delivery of the Goods shall be EXW (Incoterms® 2020) (meaning that the Buyer is responsible for collection and transit at the Buyer's risk), and delivery is deemed to take place at the Seller's premises.
 - (b) Without prejudice to any other rights of the Seller, if the Buyer fails to give, on or before the Delivery Date, all instructions reasonably required by the Seller and all necessary documentation, licences, consents and authorities (which the Buyer is obliged under the Contract or by law to obtain) for delivery, or otherwise fails to accept delivery or provide assistance or causes or requests a delay:
 - (i) the Buyer will pay to the Seller all transit, storage and waiting time costs and any other loss, damage and expenses, including any loss caused by diminution in value of the Goods, incurred by the Seller arising from such delay or failure;
 - (ii) delivery of the Goods will be deemed to have completed at 9am on the Delivery Date and an invoice shall be issued;
 - (iii) if the Goods have not actually been delivered within seven days of the Delivery Date, the Seller shall have the right to re-sell or otherwise dispose of the Goods.
 - (c) The Seller shall be entitled to make deliveries in instalments and each instalment shall constitute a separate Contract and may be invoiced separately.
 - (d) If the Seller has agreed to delivery on a "call-off" basis, the parties shall stipulate in the Order a long-stop date and lead times, failing which the Seller may at any time demand that the Buyer takes immediate delivery of the remaining quantity of Goods ordered and shall be entitled to invoice the Buyer for the same.
 - (e) The Delivery Date (including time of delivery) is an estimate only and time shall not be of the essence. The Seller shall have no liability whatsoever to the Buyer for any delay or failure to deliver. The Buyer shall not be entitled to reject any delivery or instalment as a result of any failure to deliver or delay in delivering any Goods. The Buyer's sole remedy shall be a refund of any sums paid in advance for the non-delivered Goods, which shall be refunded once the Seller has confirmed in writing it is unable to deliver the Goods.
 - (f) The Buyer shall comply with all applicable national and international requirements in relation to export controls, export laws, restrictions and regulations from any other sovereign agency or authority (**Export Regulations**).
 - (g) The Buyer agrees not to export or allow to (re-)export or release to a national of a restricted or embargoed country or to a person, entity or shipping company listed as a restricted party by an export authority or export regulations, any technical data, information or any Goods in violation of any Export Regulations, unless and until all required licenses and authorizations are obtained from the competent export authority.
- ### 5. Title and risk
- (a) Risk in the Goods shall pass to the Buyer upon delivery.
 - (b) Notwithstanding delivery, title to the Goods shall not pass to the Buyer until the earlier of: (i) receipt of full payment for the Goods, in which case title shall pass at the time of payment; (ii) use or processing (such that the Goods are no longer in their original condition) or sale of the Goods by the Buyer, in which case title shall pass at the time specified in clause 5(d); or (iii) the date notified to the Buyer by the Seller in writing.
 - (c) Until title to the Goods passes to the Buyer, the Buyer shall:
 - (i) store the Goods separately and mark or identify the Goods as belonging to the Seller;
 - (ii) not encumber, charge or grant security over such Goods;
 - (iii) notify the Seller immediately if the Buyer becomes subject to an Insolvency Event;
 - (iv) provide such information relating to the Goods as the Seller may require from time to time;
 - (v) at the Seller's request and where payment for the Goods has not taken place in accordance with these terms, deliver up all Goods in the Buyer's possession; and
 - (vi) permit the Seller, and grant the Seller an irrevocable licence, to enter any premises where the Goods are stored (at any time and without notice) to inspect and/or repossess the Goods.
 - (d) Subject to clause 5(e), the Buyer may use or process (such that the original condition of the Goods is changed) or sell the Goods in the ordinary course

of its business before title passes; however, if it does so: (i) it shall act as principal and not as the Seller's agent; and (ii) title to the relevant Goods shall pass to the Buyer immediately before the relevant use, processing or sale.

- (e) If before title passes to the Buyer, the Buyer becomes subject to an Insolvency Event, without limiting any other right or remedy, the Buyer's right to use, process or sell the Goods in the ordinary course of business ceases immediately and the Seller may at any time: (i) require the Buyer to deliver up all Goods in its possession; and (ii) enter any premises where the Goods are stored and recover them.

6. Quantity and weight

Goods shall be weighed at the Seller's premises using certified equipment prior to delivery and such weight shall be final and binding. The Buyer shall have no right to contest the weight of the Goods or to reject the Goods on grounds of weight loss or shortage. The Seller shall be entitled to deliver up to 10% more or less of Goods ordered and to adjust the relevant invoice accordingly.

7. Responsibility for defects

- (a) The Seller warrants that upon delivery the Goods shall conform in all material respects with the specification referenced in the Order or on the relevant invoice (or if not referenced, the relevant product specification in force at the time of delivery, available to the Buyer upon request) (the **Specification**).
- (b) Notwithstanding clause 7(a), it is the Buyer's responsibility to ensure that the Goods are fit for purpose and to test the Goods prior to use. The Seller shall have no liability to the Buyer in this regard.
- (c) Any material non-conformity with the Specification (**defect**) must be notified to the Seller in writing: (i) within two business days of receipt of the Goods by the Buyer in the case of a defect which is visible or ought to be visible on receipt; or (ii) as soon as practicable in the case of any other defect and by no later than one month of the date of discovery and in any event within 60 days of the date of delivery. The Seller shall be given a reasonable opportunity to examine the Goods and the Buyer shall, upon request, return such Goods to the Seller at the Seller's cost.
- (d) Subject to clause 7(e), if a substantiated defect has been validly notified to the Seller, the Seller shall at its option, exchange or refund the price of the defective Goods. This shall be the Buyer's sole and exclusive remedy in respect of any defect.
- (e) The remedy provided in clause 7(d) shall not apply if:
- (i) the Buyer has used, altered or processed the Goods or combined them with any other product or substance;
 - (ii) the defect is due to any fair wear and tear, wilful damage, negligence or abnormal working conditions;
 - (iii) the Goods differ from the Specification as a result of changes made to comply with applicable laws or regulations;
 - (iv) the Goods were not properly handled, carried, stored or maintained after delivery (including during transit to the Buyer's premises at the Buyer's risk);
 - (v) the Goods have been contaminated after delivery;
 - (vi) the Buyer makes any further use of the Goods following identification of a defect;
 - (vii) the Buyer has sold the Goods; and/or
 - (viii) the defect arises as a result of the Seller following any specification or other requirement of the Buyer.
- (f) If the alleged defect relates to loss or damage during transit (for which the Seller was responsible), this clause 7 shall apply, save that the Buyer must give written notice to the Seller within 21 days of non-delivery or two business days of delivery of the Goods at the latest and the Buyer must also comply in all respects with the carrier's conditions of carriage for notifying claims (if any). The Buyer's remedy for such loss and damage shall be limited to the remedy available from the independent carrier.
- (g) Save as set out above, all other warranties express or implied are excluded to the fullest extent permitted by law.

8. Liability

- (a) Subject to clause 8(c), the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any third party loss, loss of profit, loss of production, loss of business or loss of opportunity and/or for any indirect or consequential loss or special or punitive damages arising under or in connection with the supply of Goods and/or the Contract.
- (b) Subject to clause 8(c), the Seller's total liability to the Buyer in respect of all losses arising under or in connection with the supply of Goods and/or the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid for the Goods that are the subject matter of any such action, dispute or claim.
- (c) Nothing in these terms shall limit or exclude the Seller's liability if and to the extent that such liability cannot be limited or excluded by law.
- (d) The Buyer hereby indemnifies and shall keep the Seller and its group companies indemnified on demand from and against all losses, damages, liabilities, claims, fines, costs and expenses suffered or incurred by or awarded against the Seller arising out of or in connection with any claims or allegations of whatever nature by third parties to whom the Goods have been sold (or re-sold) following sale to the Buyer.

9. Force Majeure

The Seller shall not be in breach of Contract nor be liable for any delay in performing or failure to perform any of its obligations due to any event beyond the Seller's reasonable control, including interruption or failure of a utility service or transport network; act of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; war or armed conflict, terrorist attack, riot or civil unrest; nuclear, chemical or biological contamination; sonic boom; malicious damage; governmental action or intervention; compliance with applicable law; breakdown of plant or machinery; collapse of buildings, fire, explosion or accident; restrictions on energy supply; labour or trade disputes, strikes, industrial action or lockout; non-granted permission; unfavourable transport or weather conditions; and/or non-performance by suppliers or subcontractors. If performance is so delayed by more than six months, either party shall be entitled to terminate immediately without liability upon written notice.

10. Termination

- (a) Without prejudice to any other right or remedy, the Seller shall be entitled to terminate a Contract and/or cancel any Order or instalment immediately upon written notice and in accordance with Italian laws, without liability, if: (i) the Buyer fails to make a payment in full on the due date for payment; (ii) the Buyer commits any other breach of a Contract that the Seller specifies; or (iii) the Buyer suffers an Insolvency Event.
- (b) The Seller shall have the right at any time to terminate any Contract with the Buyer and/or cancel any Order or instalment on providing at least seven days' prior written notice to the Buyer. The Buyer shall have no right to cancel an Order once accepted, subject to clause 9.
- (c) Upon termination or cancellation, all invoices shall become immediately due and payable by the Buyer, together with any applicable interest. Clauses which expressly or by implication survive termination or cancellation shall continue in full force and effect.

11. General

- (a) The Seller and the Buyer each agree to adhere to the Seller's Code of Sustainable Conduct (current copy available at <https://www.sibelco.com/wp-content/uploads/code-of-sustainable-conduct.pdf>) in connection with the performance of the Contract.
- (b) The Seller shall comply with applicable laws relating to the processing of personal data (including the GDPR). Such processing shall be in accordance with its privacy policy (current copy available at www.sibelco.com/privacy).
- (c) If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any such modification shall not affect the validity and enforceability of the rest of the Contract.
- (d) No failure or delay to exercise (or to exercise in full) any right or remedy shall constitute a waiver or abandonment of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- (e) The Seller may at any time, without the consent of the Buyer, assign, outsource, subcontract, transfer or otherwise deal in any manner with all or any of its rights or obligations under a Contract. The Buyer shall not assign or transfer, subcontract or otherwise deal in any manner with any or all of its rights and obligations under a Contract without the prior written consent of the Seller.
- (f) A person who is not a party to a Contract shall have no rights under it. Each Contract is entered into by the specific Seller entity named in the Order or as otherwise determined by Seller in writing. The Buyer shall have no rights to enforce the Contract against any other Seller entity and such other entities shall have no liability to the Buyer.

12. Governing Law and Jurisdiction

- (a) These terms and each Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them, their subject matter or formation shall be governed and construed in accordance with the law of the country where Seller's registered office is located. Each party irrevocably agrees that the courts of the territory where Seller's registered office is located shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms and any Contract, their subject matter or formation. The UN Convention of Contracts for the International Sale of Goods is expressly and entirely excluded.
- (b) Notwithstanding clause 12(a), the Seller shall be entitled to bring court proceedings or claims in any jurisdiction in which the Buyer is resident and/or has assets.