

Payment and Delivery Terms

1. All tenders and deliveries are governed exclusively by the following payment and delivery terms, unless we have confirmed in writing our prior agreement to deviations therefrom. These terms form an integral part of the sales contract. The sales contract comes into force when it is confirmed by us in writing.

All of our tenders are made subject to change. Partial deliveries are treated as separate transactions, unless agreed otherwise. Where the purchaser's trading terms run contrary to these, such terms become effective only if and inasmuch as they have been acknowledged by us in writing.

2. All prices are Free On Truck/Free On Rail ex-works, or, as appropriate, Free On Rail at the railway station nearest the plant. Connection fees and fees for the provision of cargo cars, as well as costs associated with any weights inspection made by the railway authorities are the responsibility of the purchaser. For billing purposes, the weight determined at the drop-off station at the works or at trackside shall apply. Where delivery is by ship, billing shall be based on the weight determined by a certified, publicly appointed marine weights and measures inspector. Any loss of weight during transportation, which can be caused by the clay drying out, shall not constitute grounds for a warranty claim.
3. Unforeseen interruptions to our operations or unavoidable restraints on our business, as well as any acts of God, shall release us from our obligations to make the delivery. In such cases we undertake to inform the purchaser without delay. Delivery of any supplies omitted for such reasons shall, wherever possible, be made at a later date.
4. Unless expressly agreed to the contrary, payment without any deduction is due 30 days from date of invoice. Where payment deadlines are missed, we shall add surcharges and interest at a level equal to the normal annual rate in use by us at that time for the provision of credit. Should adverse information about the purchaser arise after completion of the purchase agreement, we shall be entitled to require prepayment or to cancel the contract.
5. In respect of the quality of the materials to be delivered, we guarantee that this shall be equal to that of the sample consignments, or, where relevant, trial deliveries, insofar as this is possible having all due regard to the natural characteristics of the raw materials delivered. The 'post trial purchase' (Kauf nach Probe) provisions of clause no. 494 of German civil law (Bürgerliches Gesetzbuch/BGB) shall not apply. The amount of earth in the clay shall be consistent with trade norms, unless any alternative agreements shall have been made. Where any characteristics of the goods are to be warranted this shall require the written agreement of both parties. Where imperfections or discrepancies are identified notice of such is to be given within 8 days of receipt of the goods. In the event of a dispute arising, a test sample from the goods shall be taken jointly by both parties and the dispute shall be decided by the results of investigations made into such sample by a testing facility approved of by both parties. The costs of such investigations shall be borne by the unsuccessful party.



In the event of a complaint arising, any loads already dispatched by rail or by road shall be unloaded and stored in an orderly manner without prejudice to any subsequent ruling. All associated costs shall be borne by the unsuccessful party to any such ruling.

Where deliveries are faulty compensation shall be paid up to the value of the goods, except where to assume responsibility for such payment shall be deemed to carry on-going risk.

We offer no warranties in respect of imperfections arising in the production process, unless, in addition to these terms, we have expressly agreed to take on exceptional risks.

6. Risk for the delivery shall pass to the buyer at the point of transfer to the carrier, haulage contractor or German Railways (Deutsche Bahn AG).
7. After delivery, title to the goods shall rest with us until payment in full has been received. If goods to which we still hold title are processed with others, we shall acquire joint title to the new product to the extent of our share of its value.

Should goods to which we retain title be sold on, the purchaser thereby assigns to us by way of security, to the value of the outstanding debt owed to us, all receivables and claims against third parties to which he becomes entitled through such re-sale.

If requested to do so by the purchaser, the vendor undertakes to release voluntarily the securities to which he is entitled in accordance with the preceding terms where the value that can be realised from the securities exceeds the debts to be secured by more than 20%. We shall be entitled to require the surrender at any time of the goods to which we retain title if it appears to us that there exists an appreciable risk that debts owed to us will not be satisfied. A right of lien cannot be asserted in opposition to such claim for surrender. Any return of goods shall be effected solely as a precautionary measure and, even where partial payments are retrospectively agreed, shall not constitute cancellation of the contract.

8. If any provision of this contract is or becomes unenforceable the remaining provisions shall remain binding. The parties to this contract agree to replace the unenforceable provision with an enforceable one that reflects the commercial intent of the unenforceable provision.
9. Election of domicile for enforcement of all obligations under this contract shall be Ransbach-Baumbach, Germany. Jurisdiction for any legal disputes arising from this contractual relationship shall be the courts of Montabaur, Germany.

Sibelco Deutschland GmbH

Ransbach-Baumbach, April 2010

