

## **TERMS AND CONDITIONS OF PURCHASER GOODS AND SERVICES**

### **1. DEFINITIONS**

In these conditions, unless the context requires otherwise:

**"Buyer"** means Sibelco UK Limited (company number 578631) whose registered office is at Brookside Hall, Congleton Road, Sandbach, Cheshire CW11 4TF

**"Goods"** means the subject matter of the contract including (but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities, etc and whether one or a number of items, whether or not identical or similar (including any such materials, articles and commodities supplied in connection with the Services).

**"Order"** means a purchase order in respect of the Goods and/or Services issued by the Buyer to the Supplier on the Buyer's official purchase order form, together with all documents referred to in it.

**"Services"** means work and/or services or any of them to be performed by the Supplier for the Buyer pursuant to the Order.

**"Supplier"** means the company, firm, body or person to whom an Order is addressed.

### **2. ACCEPTANCE**

The Buyer shall not be liable for any Order unless:

2.1 it is issued or confirmed on the Buyer's official order form; and

2.2 the Supplier confirms in writing acceptance of it and these conditions.

### **3. VARIATION**

Neither the Buyer nor the Supplier shall be bound by any variation, waiver of or addition to these conditions except as agreed by both parties in writing and signed on their behalf by their duly authorised representatives.

### **4. QUALITY ETC, REMEDIES**

4.1 Subject to these conditions, the Goods and Services to be provided shall:

4.1.1 conform as to quantity, quality and description with the Order and any specification or standards stated or referred to in the Order;

4.1.2 be of first-class materials and workmanship throughout and be executed with reasonable care and skill by properly qualified and experienced persons;

4.1.3 be equal in all respects to any samples, patterns, demonstration or specification provided or given by either party;

4.1.4 be capable of any standard of performance specified in the Order;

4.1.5 if the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that purpose; and

4.1.6 comply with any statutory rules whether European or domestic or any other regulation that may be in force relating to the Goods and/or the Services.

4.2 The Supplier will keep the Buyer indemnified in respect of all loss, damage, injury, costs and expenses which result, directly or indirectly, from defective Goods, workmanship, design or Services supplied or provided by the Supplier or any other defect or fault in the construction of the Goods and the performance of the Services and, in addition, the Supplier will repair, replace or reinstate at the Buyer's option, any defective item or items free of charge.

- 4.3 Without prejudice to any right or remedy available to the Buyer under statute or common law, the Supplier will keep the Buyer indemnified in respect of any liability suffered or incurred by the Buyer as a result of the supply or use by the Supplier of defective Goods or workmanship in carrying out the Order, or which arise as a result of the performance of the Services or as a result of any breach of the conditions, warranties, inducements or representations expressed or implied in the contract or any other breach of contract on the part of the Supplier, including but not limited to consequential or indirect loss and loss of profits.

## **5. INSPECTION AND TESTING**

- 5.1 The Buyer's inspector or representative and any inspector or representative of the Buyer's customer or the agent of any of them or of any government department concerned, may, on the Buyer's authority, inspect or test the Goods or Services at any reasonable time at the Supplier's works or at the works of any permitted subcontractor or assignee. For this purpose, the Supplier will give to the Buyer or any nominee of the Buyer, or otherwise arrange for, reasonable facilities of access to the Supplier's works or any such other works.
- 5.2 If specified by the Buyer, the Supplier will give adequate notice of works tests which the Buyer is entitled to attend and will provide the Buyer with such test certificates as the Buyer or its customer may reasonably require.
- 5.3 Such inspection does not relieve the Supplier of any liability nor does it imply acceptance of the Goods or Services.
- 5.4 The Buyer reserves the right, at its option, either to reject any Goods or Services in whole or in part (whether or not the same have been delivered to and accepted by the Buyer) or to cancel the Order or any part of the Order or to delay acceptance of the whole or any part of it without any further payment or charge for storage or delay in any of the following circumstances:
- 5.4.1 failure by the Supplier to comply strictly with the description, specification and drawings relating to Goods to be supplied or Services to be carried out and/or failure to comply with any British or other standard specification where applicable;
  - 5.4.2 if the Goods or Services are below the specified standard or fail to pass any inspection or test in accordance with these conditions; or
  - 5.4.3 if the Supplier otherwise fails to comply in all respects with any of its obligations under these conditions.

## **6. PERFORMANCE DELAY**

- 6.1 Unless otherwise agreed in writing, any time or period given for delivery, despatch, performance or completion shall be of the essence. The Supplier shall immediately notify the Buyer of any apprehended delay in delivery, despatch, completion or performance.
- 6.2 The Buyer reserves the right to reject Goods or Services not delivered or performed on time and/or to cancel the whole or any part of the Order of which such Goods or Services form part and/or to return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use. Such rights of rejection, cancellation or return shall be available to the Buyer irrespective of the cause of delay without prejudice to the Buyer's right to damages and any other remedies against the Supplier for breach of contract and without any liability of whatever nature on the Buyer.

- 6.3 No concession with respect to delays in delivery, despatch, completion or performance shall be construed as a waiver of any of the Buyer's rights and remedies unless such waiver is specifically agreed in writing and signed by a duly authorised representative of the Buyer.

**7. DELIVERY, PACKING, ETC**

- 7.1 Deliveries made in advance of the Buyer's requirements may be returned to the Supplier at the Supplier's expense or accepted at the Buyer's option. If the Buyer accepts them, the Buyer shall be entitled to defer payment until the month following the month in which delivery should have taken place.
- 7.2 Scheduled Orders only. A Scheduled Order indicates the Buyer's estimated requirements for the Goods or Services described in it. The Buyer will not accept delivery or performance of or be in any way liable to pay for any Goods or Services described in a Scheduled Order unless the Buyer has given the Supplier written release or performance instructions which are directly attributable to that Scheduled Order.
- 7.3 No responsibility is accepted for Goods delivered or Services performed in excess of the Order.
- 7.4 All Goods must be adequately protected against damage and deterioration in transit and delivered carriage paid in accordance with the Buyer's instructions (if given) and the packages of Goods must bear the description and the quantity of the contents and the Buyer's Order number.
- 7.5 The Buyer accepts no liability for packing materials or cases unless previously agreed.
- 7.6 The Buyer will not be responsible for any failure to give notice to carriers of loss, damage, delay, detention or transit or non-delivery.
- 7.7 The Supplier agrees on request to supply the Buyer with any necessary declarations and documents stating the origin of the Goods.

**8. STAGED PAYMENTS**

The Supplier acknowledges that:

- 8.1 in the event that the Supplier receives part payment for the Goods and during the term of the Order continues to receive staged payments. The Goods to be supplied pursuant to the Order shall become the property of the Buyer from the moment of manufacture notwithstanding that its value at such time may exceed or be less than the value of the staged payments made by the Buyer;
- 8.2 where prior to delivery, the property in the Goods passes to the Buyer the Supplier shall so far as is practicable set the Goods aside and mark it as the Buyer's property in a manner reasonably required by the Buyer

**9. PASSING OF TITLE TO THE GOODS**

- 9.1 Title to the Goods shall pass to the Buyer on delivery to the place specified in the Order or as otherwise agreed without prejudice to any right of rejection or other right which may accrue or have accrued to the Buyer under these conditions or otherwise.
- 9.2 If the Supplier postpones delivery at the Buyer's request, title to the Goods shall nevertheless pass to the Buyer on the date when, but for such postponement, the Goods would have been delivered.
- 9.3 Goods shall be at the risk of the Supplier until actually delivered even where the delivery has been delayed or postponed by the Buyer or at the Buyer's request.

9.4 All Goods rejected or returned for any reason shall be at the risk of the Supplier during transit back to the Supplier.

**10. PRICE AND PAYMENT**

10.1 Unless the Order expressly accepts or stipulates any provision for price variation and the basis of such variation, the price or rate for the Goods and any Services is fixed and not subject to variation unless the Buyer expressly agrees in writing signed by a duly authorised representative of the Buyer.

10.2 Failure by the Supplier to attend to any of the following details may mean delay in payment (but with no prompt payment discount to be forfeited by the Buyer):

10.2.1 failure by the Supplier to send, on the day of despatch for each consignment of Goods or on the performance of the Services, a separate advice note and invoice for each such delivery or performance; or

10.2.2 failure by the Supplier to mark clearly the Order number on the consignment package, packing notes, invoices, monthly statements and all other correspondence relating to them.

10.3 Payments will be made [60] days after the date of invoice. All payments will be made without prejudice to the Buyer's rights should the Goods or any Services prove unsatisfactory or not in accordance with the Order.

10.4 The Buyer reserves the right to deduct from any monies due or becoming due to the Supplier any monies due from the Supplier to the Buyer on any account.

**11. CONFIDENTIALITY**

11.1 All designs, tools, patterns, drawings, dies, materials, specifications and other items supplied by the Buyer or provided by the Supplier shall be or become the Buyer's property, shall be maintained by the Supplier in good condition, shall be kept confidential and not be used for any purpose other than carrying out this Order or any subsequent order placed by the Buyer and shall be returned or delivered to the Buyer carriage paid on request. The Supplier will be responsible for making good any loss of or damage to such items howsoever arising.

11.2 The Order and its subject matter shall be treated as confidential between the Supplier and the Buyer and shall not be disclosed by the Supplier (or any permitted subcontractor or assignee or supplier) to any third party or used by the Supplier (or any permitted subcontractor or assignee) for advertisement, display or publication without the Buyer's prior consent in writing.

11.3 The Supplier agrees neither to quote nor to supply parts made with the Buyer's designs, tools, patterns, drawings, dies or specifications to any third party without the Buyer's prior consent in writing.

**12. PATENT INFRINGEMENT**

The Supplier will keep the Buyer fully indemnified (except in respect of designs provided by the Buyer) against all claims of whatsoever nature (including those for royalties, damage or other losses) arising from infringement of patents, registered designs, unregistered designs, design rights, copyrights, trade marks or any other intellectual property rights in relation to the Order and in relation to the use of articles or processes pursuant to the Order.

**13. INDEMNITY**

Over of the Buyer or any third party and against any claim in respect of the death of or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise as a result of breach of any statutory or common law duty or of any act or omission on the part of the Supplier or any of its employees, subcontractors, assignees or agents or as a result of the performance or non-performance of the Order or otherwise however arising wherever such loss, damage, death or personal injury occurs (including, but not limited, to the Buyer's premises).

**14. TERMINATION**

If the Supplier, being an individual, becomes bankrupt or insolvent or has a receiving order made against him or compounds with his creditors or, being a company, is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator, the Buyer shall be at liberty (but not bound) at any time after that:

14.1 to cancel all or any part of the Order immediately by notice and to collect immediately all material, goods, tools or articles of any description sent to the Supplier for any purpose; or

14.2 to give the Supplier or the receiver, liquidator or other person the option of carrying on with the Order subject to his providing a guarantee up to an amount to be agreed for the due and faithful execution of the Order.

**15. ASSIGNMENT AND SUBCONTRACTING**

15.1 The Supplier shall not without the consent in writing of the Buyer assign or transfer the Order or any part of it to any other person.

15.2 The Supplier shall not without the consent in writing of the Buyer subcontract the Order or any part of it other than for materials, minor details or for any part of the Goods of which the makers are named in the Order or the specification. Any such consent shall not relieve the Supplier of any of its obligations under the contract.

**16. INVENTIONS AND IMPROVEMENTS**

When the Order includes manufacture to the Buyer's designs the Supplier agrees to inform the Buyer of any invention or improvement in design or method of manufacture arising out of the performance of the Order by or on behalf of the Supplier and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of the Buyer. The Supplier will give the Buyer at the Buyer's expense all necessary assistance to enable the Buyer to obtain patent, registered design and similar rights throughout the world.

**17. HEALTH AND SAFETY**

The Supplier warrants that the Goods or materials to be supplied in accordance with the Order will be safe and without risk to health when properly used and the Supplier will provide all necessary information in connection with the design, testing and use of them (whether or not such information has been requested by the Buyer).

**18. LICENCES**

If the performance of the Order requires the Buyer to have any permit or licence from any government or other authority at home or overseas, the Order shall be conditional upon such permit or licence being available at the required time.

**19. INSURANCE**

The Supplier will at all times insure and keep itself insured with a reputable insurance company against all insurable liabilities under the Order and in respect of the Goods or Services. The Supplier will provide all facilities, assistance and advice required by the Buyer or the Buyer's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance of the Order.

**20. NOTICES**

20.1 Any notice or other document to be served under this agreement must be in writing and may be delivered or sent by prepaid first class letter post or facsimile transmission.

20.2 Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmission, at the time of transmission.

**21. INVALIDITY**

The invalidity, illegality or unenforceability of any provision of these conditions shall not affect the other conditions.

**22. LAW AND APPLICATION**

22.1 A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

22.2 The contract (and any proceedings by which one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

22.3 These conditions shall have precedence over any conditions appearing on any quotation, acceptance form, delivery form, invoice or other document or letter emanating from the Supplier and such conditions shall have no effect whatever except insofar as they are expressly accepted in writing by the Buyer.

22.4 Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which the Buyer is entitled in relation to the contract by virtue of statute or common law. The rights and remedies conferred on the Buyer by these conditions are in addition to and in no way in substitution for any conditions, warranties or other rights or remedies conferred on the Buyer or implied by law.