

## General Terms and Conditions of Sale of Sibelco Deutschland GmbH

### **I. General provisions**

Any delivery of goods and services by Sibelco to customers shall be subject to the following terms and conditions unless we have explicitly agreed to the general terms and conditions of the customer in writing.

### **II. Offers, prices, payment and offset**

1. Our offers are subject to change and our price quotations are non-binding until we have confirmed an order.
2. The value of the goods shall be calculated based on the weight of the goods before dispatch determined at our works with calibrated scales. Loss of weight caused by the material drying out during transport shall not justify warranty claims.
3. Payments shall be due without deductions at the latest within 30 days from the date of invoice.
4. The customer is entitled to offset payment claims only in the case of undisputed claims or those enforced by law.

### **III. Delivery**

1. With regard to deadlines and delivery dates not expressly referred to as “fixed” in the order confirmation the customer may set a reasonable extension period for delivery and performance after the regular deadline has exceeded. We shall be in default only after the expiry of this extension period.
2. The correct and on-schedule delivery of goods to us by sub-suppliers remains reserved provided that we are not responsible for the incorrect or delayed delivery.
3. Unforeseeable, exceptional circumstances beyond our control such as industrial disputes, plant breakdowns, government actions, machine and transport disruptions, bottlenecks in energy supply or other events of force majeure shall exempt us from obligations arising from contracts; impediments of temporary nature however shall only exempt us for the duration of the impediment plus an adequate ramp-up period. If as a result of such events it should subsequently become impossible or unreasonable for one of the parties to deliver, both parties are entitled to withdraw from the contract.
4. We have the right to make partial deliveries as can be reasonably expected to be accepted by the customer. Partial deliveries may not be additionally charged to the customer.
5. In the event of a delay on our part the customer shall be entitled to withdraw from the contract only after a reasonable deadline for performance has been set - including a threat of

declining the order. The customer can only demand compensation for damages due to delay only in accordance with **Clause VI**.

#### **IV. Warranty period**

The warranty period is 1 year from the transfer of risk.

#### **V. Quality, guarantees and liability for defects**

1. The quality of our raw material deliveries shall correspond to the previous sample or trial deliveries only to the extent possible under consideration of the natural properties of the delivered raw materials. Unless otherwise agreed, the quality specified in accordance with our specific product information in the relevant data sheet or apart from that the quality customary in the trade shall be deemed as agreed.
2. Disputes on the quality of the raw materials shall be settled by a mutually recognised testing body after the joint taking of samples. The costs incurring for the examination of the raw material shall be borne by the unsuccessful party. In the event of complaints already dispatched deliveries must be properly unloaded and stored without prejudice to any subsequent regulations. The costs incurring for this shall be borne by the unsuccessful party.
3. Quality descriptions for example in catalogues, quality data sheets and quality and analysis certificates shall not constitute any guarantees. Guarantees shall only be deemed provided if explicitly declared by us under use of this term. A processing of our raw material in the production of foodstuffs or cosmetics is only permitted if explicitly agreed.
4. If the goods are faulty we reserve the right to fulfil the warranty by making a replacement delivery. If the replacement delivery fails twice, the customer can generally demand a reduction in price or withdraw from the contract at its discretion. Only in the case of minor deficiencies which have no influence on the intended use of the goods by the customer, will the customer not be entitled to withdraw from the contract.
5. The customer must check the delivery directly after receipt and immediately report all obvious deficiencies to us in writing. The notification of deficiencies shall be deemed to meet the due date if sent within 5 work days after delivery, otherwise the assertion of claims will be excluded.

#### **VI. Limitation of liability**

1. All kinds of claims for reimbursement of expenses or damage against us and our legal representatives and agents shall be excluded, except in cases of intent or gross negligence or breach of major contractual obligations. Breach of major contractual obligations in this sense shall mean all obligations which must be mandatorily fulfilled for the due and proper implementation of this contract and on which the customer may generally rely on. Unless intent has been proven, liability shall however be limited to the compensation of typically foreseeable damage.

2. The above limitations and exclusions of liability shall not apply for liability in accordance with the product liability law pursuant to the European product liability directive or for damages to life, body or health for which we are liable in accordance with the statutory provisions.

## **VII. Retention of ownership**

1. We shall retain the ownership in the delivered goods until full payment has been received in settlement of all claims resulting from this business relationship.
2. For us as manufacturer the processing of the retained goods through the customer shall always occur within the meaning of § 950 German Civil Code (BGB), without this resulting in any obligations for us. The processed goods shall be deemed retained goods within the meaning of **Clause 1**. In the event that our retained goods are processed, blended, mixed or merged with other goods not belonging to us, we will be entitled to a co-ownership in the new goods, namely in the ratio of the net invoice value of the retained goods to the net invoice value of the other goods.
3. The customer may sell or use the retained goods which are solely owned or co-owned by us within the scope of normal business, provided that the customer is not in arrears with its payments; the customer is not permitted to attach the goods, transfer or assign them by way of security. Any attachments or other seizures of the retained goods made by third parties must be reported immediately.
4. The customer hereby and in advance assigns all claims to which the customer is entitled to from the resale of the retained goods or the products created through processing, blending, mixing or merging. This shall also apply if the goods are sold at a total amount together with other goods not belonging to us. In the event that a third party has acquired ownership or co-ownership rights in the goods as a result of processing, blending, mixing or merging, the customer will hereby and in advance assign any claims to us arising against the third party. Assignments as defined in this Clause shall only ever be made to the sum of the gross invoice value of the retained goods. We hereby accepted any assignments of the customer pursuant to this Clause. The customer is authorised to collect the assigned claims until such permission is revoked.
5. We commit to release the securities to which we are entitled in accordance with the above provisions at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10% in the event of such a claim.
6. If additional actions are required in order to enforce the retention of ownership, for example a registration according to the laws of the destination country, the customer is authorised to perform and engage in such actions.
7. If the customer is insolvent or over-indebted, the customer must refrain from disposing over any retained goods - without being requested to do so - until a possible liquidator exercises the right to choose (§ 103 German Insolvency Regulations (InsO)). The customer is obliged to report the stock in retained goods to us without delay.

8. If the customer is in arrears with payments, we shall be entitled to prohibit the customer from disposing over the retained goods in full or in parts - at our discretion - for example we can only prohibit the sale, consumption or processing etc. or demand the submission of the retained goods. If the retained goods have been processed, blended, mixed or merged with other goods, we are entitled to demand the submission of the goods to a trustee; the customer is obliged to name all co-owners of the retained goods under specification of their company or name, address and co-ownership share. The same shall apply for claims which have been assigned to us in accordance with the above Clauses; in addition the customer must without being requested forward the names and address of all debtors as well as the copies of the documented evidence of claims against the customer to us.

**VIII. Place of performance, applicable law, place of jurisdiction**

1. The place of performance is in all cases the registered office of our contracting branch.
2. All contracts are subject to German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. The sole place of jurisdiction is Montabaur.