

# SOLEXIN INDUSTRIES LIMITED

## Terms and Conditions for the supply of EnviroCutter (EC) to New Zealand Customers Dated 14 April 2021

### 1. DEFINITIONS

**Bank Account** means the nominated bank account number provided in writing by SIL from time to time.

**Certified** means a person certified under the Bitumen Basic Safety Course and the Bitumen Plant and Tanker Operator Course provided by the New Zealand Institute of Highway Technology or any subsequent or equivalent certification approved in writing by SIL.

**Container** means the vessel used for the transportation of EC specified in the Quotation and being either drums, IBCs, 20 foot High Cube Bulk Container, or a nominated bulk storage tanker, or a tank, as the case may be.

**Customer** means a person who has an open and active trading account with SIL and who has received from SIL a Quotation for EC, and includes anyone acting with the reasonable, apparent or ostensible authority of the Customer. Customer also includes a person without an open and active trading account but who makes a purchase of EC on a pro forma basis as set out in these T&Cs and anyone acting with the reasonable, apparent or ostensible authority of such a Customer.

**Delivery Date** means the date on which the risk in the EC is transferred to the Customer.

**Facility** means SIL's EC manufacturing, storage and supply factory situated at 115 Mould Street, Waitara 4320, New Zealand.

**Goods and/or Services** means all goods, products, services and advice provided by SIL to the Customer and includes without limitation the installation, repair and maintenance of Container parts and all charges for labour, hire charges, insurance charges and any other fees associated with supplying EC.

**IBC** means Intermediate Bulk Container

**Invoice** means a statement of the amount of money owed by the Customer to SIL for EC and any Goods and/or Services supplied.

**Load-Out Hose** means the SIL hose that transfers EC from the SIL bulk EC storage tank to the Container.

**NZD or NZ\$** means the currency of New Zealand.

**Order** means an acceptance in writing by the Customer of a quotation from SIL for the supply of EC.

**Payment** means a cleared and irreversible payment by the Customer into SIL's Bank Account of the Invoice without deduction when it is due.

**Price** means the quoted SIL ex works price for EC in NZ\$ per metric tonne (excluding GST), plus any other quoted costs including Container purchase, handling or delivery costs.

**Quotation** means a dated written statement issued by SIL of the Price, quantity and specification of EC offered to a Customer.

**Sales Confirmation (Pro-forma Invoice)** means the SIL document containing the date, quantity and price of EC to be supplied by SIL to the Customer at a future date and issued once a Quotation is accepted.

**Solexin Approved Operator** means that person approved by Solexin and who is Certified.

**Security Interest** is that term as defined in the *Personal Property Securities Act 1999*.

**SIL** means Solexin Industries Limited (Company No.173224) having its registered office at 691 Devon Road, Waiwhakairo, New Plymouth 4312, New Zealand.

**T&Cs** means these Terms and Conditions.

**Waka Kotahi NZTA** means Waka Kotahi New Zealand Transport Agency.

**Working Day** means a day (other than a Saturday, or Sunday, or a public holiday) on which clearing banks are open for business in Waitara, New Zealand.

### 1.1 Interpretation

1.1.1 SIL and the Customer may be referred to as the **Parties** or **Party** in this Agreement as the case may be.

1.1.2 Words in the singular include the plural meaning and words in the plural meaning include the singular meaning; use of any gender includes the other genders.

### 2. ACCEPTANCE OF TERMS AND CONDITIONS

**Soloxin**

2.1 The Customer agrees to be bound by these T&Cs on opening an Account, and on each placement of an Order. It is the Customer's responsibility to remain familiar with all T&Cs at all times.

2.2 Current T&Cs may be viewed on the [www.soloxin.net](http://www.soloxin.net) website.

2.3 No terms and conditions or forms issued by the Customer shall in any way apply to compete with or bind SIL in relation to the supply of EC to the Customer. These T&Cs represent the sole and exclusive terms which apply to the supply of EC.

### 3. QUOTATION

3.1 The Price contained in any Quotation to the Customer is valid for a period of thirty (30) days from the date on which it was given unless it is withdrawn by SIL before its acceptance.

An open Quotation may only be accepted by the Customer in writing (including by email) at which point an Order is established. SIL is not obliged to supply any Product until a completed Order is held by SIL.

### 4. PRICE

4.1 SIL reserves the right, without notice, to change or withdraw any Quotation for the supply of EC prior to its acceptance.

4.2 SIL may at any time prior to an Order being confirmed adjust any supplied Price for EC without notice.

### 5. GOODS AND SERVICES TAX

5.1 All Prices are in NZ\$ and exclusive of Goods and Services Tax (GST), unless otherwise stated.

5.2 If GST and, or any other taxes, levies or charges are payable on the supply of EC, SIL will invoice and the Customer must pay all GST and any other taxes, levies or charges at the same time as the Price.

### 6. PAYMENT

6.1 For Customers who hold an approved account in good standing with SIL the amount of any SIL Invoice and any other amount owed by the Customer, is to be paid by direct electronic transfer into SIL's Bank Account by way of cleared funds, without any set-off or deduction on or before the last working day of the month following the month of supply.

6.2 For Customers who do not hold an approved account in good standing with SIL, SIL will issue a Sales Confirmation (Pro-forma Invoice) on confirmation of an Order and the Customer must ensure full payment by direct electronic transfer into SIL's Bank Account by way of cleared funds, without any set-off or deduction before the Delivery Date for the Order. For clarity a Customer without an approved account in good standing, will not be able to take delivery of EC without having first made payment of the Sales Confirmation (Pro-forma Invoice). On completion of delivery of EC to a Customer who holds a Sales Confirmation (Pro-forma Invoice), SIL shall advise the exact quantity of EC delivered and issue an Invoice for such exact quantity with the Customer to promptly pay any shortfall owing (where the quantity of EC delivered exceeded the quantity provided for in the Order) or SIL shall promptly pay to the Customer any refund due to the extent that the quantity of EC delivered was less than the quantity provided for in the Order.

### 7. OWNERSHIP

7.1 Ownership of EC transfers to the Customer when SIL is satisfied the Invoice for the EC has been paid in full by the Customer into SIL's Bank Account and transfer of risk in the EC to the Customer has taken place as set out in clause 8. A transfer of ownership may not happen in part only, so that ownership of a shipment of EC only transfers to the Customer on the Customer completing payment in full for the whole shipment giving rise to the Invoice.

### 8. RISK

8.1 All of the risk (but not necessarily the ownership) in EC transfers to the Customer:

8.1.1 If delivery takes place using as Containers either drums or IBC's, at the point at which SIL loads such Containers at the Facility onto the Customers nominated transport; or

- 8.1.2 If delivery takes place using SIL's 20 foot High Cube Bulk Container(s), and where transport is arranged by SIL, then at the point at which such Container(s) are either offloaded in New Zealand at the delivery point nominated by the Customer and recorded in the Quotation or otherwise at the point at which the EC passes the exit valve of such Container(s) at the delivery point as it is pumped into the Customer's bulk storage tank(s) at the delivery point; or
- 8.1.3 If delivery takes place using a bulk transport carrier nominated by the Customer, or using SIL's 20 foot High Cube Bulk Container(s) but where transport is arranged by the Customer, then in each case at the point at which the EC leaves SIL's Load Out Hose at SIL's Facility to either enter the bulk transport carrier or to enter the 20 foot High Cube Bulk Container on the transporter arranged by the Customer.
- 8.2 From the point at which risk transfers as above, the Customer assumes full responsibility and liability for the EC.
- 9. DEFAULT**
- 9.1 Interest is payable on any amount invoiced but not paid by due date. Such interest will accrue daily from the day after such payment is due, until payment is made in full to the satisfaction of SIL.
- 9.2 Interest will be charged on any overdue amounts at a rate of five percent (5%) per annum over and above SIL's bank overdraft interest rate. Such interest will be calculated daily, compounding monthly.
- 9.3 If the Customer defaults in payment of any amount due to SIL, the Customer will indemnify SIL from and against all costs incurred by SIL recovering such money (including but not limited to, internal administration fees and costs, legal costs on a solicitor and own client basis, collection agency costs and bank dishonour fees).
- 9.4 In addition to any other rights or remedies SIL may have under these T&Cs, if a payment made by the Customer is reversed or reclaimed for any reason, the Customer is liable for the amount of the reversed or reclaimed transaction and any additional costs incurred by SIL as a result of the reversed or reclaimed transaction.
- 9.5 Without prejudice to any other remedies available to SIL, SIL may cancel all, or part of an Order placed by the Customer if:
- 9.5.1 any monies payable by the Customer to SIL becomes overdue, or, if in the opinion of SIL, the Customer will be unable to make a payment;
- 9.5.2 the Customer becomes insolvent or bankrupt, convenes a creditors' meeting or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 9.5.3 a receiver, manager, liquidator (provisional or otherwise) or any other person is appointed in a similar role with respect to any of the Customer's assets.
- 9.5.4 the ownership or control of the Customer's business has changed in any material manner or the nature of the Customer's business is materially altered.
- 9.6 Where the Customer has breached any of these T&Cs (including those relating to Payment), then without prejudice to any of SIL's other rights, SIL may do any or all of the following:
- 9.6.1 demand immediate payment of any money owing (regardless of whether it is due);
- 9.6.2 demand payment of any expenses incurred by SIL as a result of the Customer breaching these T&Cs;
- 9.6.3 suspend or terminate any terms of trade or Account it has offered to the Customer;
- 9.6.4 cancel any contract of supply it has with the Customer;
- 9.6.5 require to its satisfaction, that the Customer provide security before future transaction is undertaken;
- 9.6.6 suspend, limit or cancel any supply to the Customer; and
- 9.6.7 recover, at the Customer's cost, unadulterated EC already supplied to the Customer for which purpose the Customer grants to SIL, its contractors, employees and agents, an irrevocable licence to enter any premises where SIL knows or believes any EC to be present and take such steps as SIL reasonably believes necessary to recover any EC without being liable to the Customer in any way for the recovery of the EC.

**10. DELIVERY OF ENVIROCUTTER**

- 10.1 A Quotation will specify both a delivery point and delivery Container agreed by SIL with the Customer. If no specified delivery point is nominated or recorded in a Quotation then the delivery point will be at the Facility. If no delivery Container is nominated or recorded then supply will take place in IBCs and the cost of such Containers will be payable by the Customer in addition to the Price.
- 10.2 The Customer will do everything necessary to be ready and equipped to take delivery of the EC when notified by SIL and without limiting this obligation will ensure competent road transport is organised to be present on time to accept delivery of the EC where responsibility for transport ex Facility rests with the Customer. Without limiting the extent of this obligation, the Customer is responsible to ensure any Container presented at the Facility to receive EC is accurately measured on site by dip stick or electronic means before loading in order to confirm capacity of the Container to receive the EC.
- 10.3 The quantity of EC in kilograms will be measured using the Facility's calibrated mass flow meter closest to the Load-Out Hose and in the absence of any manifest error to be resolved under clause 11, will be considered final and binding.
- 10.4 Any nominated delivery date provided by SIL is an estimate only and SIL will not be liable to the Customer for any costs, expenses or losses arising from a delay or failure to deliver EC on the nominated delivery date. SIL will use all reasonable endeavours to complete delivery of EC to the Customer as close as possible to any nominated delivery date provided by SIL.
- 10.5 SIL will not without prior notification, and at its sole discretion, accept the return of any of EC nor any drums or IBCs.
- 10.6 The Customer is liable for EC handling when the risk in the EC passes to the Customer under clause 8 above. If SIL is required (or requested) after this point to provide any assistance or to act in any way to prevent or contain a spillage or discharge or otherwise to prevent a safety hazard from arising all costs of SIL including staff costs will be indemnified in full by the Customer.
- 10.7 The Customer's personnel, when at the Facility, must at all times comply with all Health & Safety policies and directions of SIL.
- 10.8 It is the responsibility of the Customer's personnel to familiarise themselves with the SIL Health & Safety policies and manual, which will be provided on request.
- 10.9 The Customer fully indemnifies SIL for all loss or damage to the Facility caused by the Customer and its personnel including nominated contractors, while on site at the Facility for any reason.
- 10.10 Without limiting the rights of SIL on a Customer's default if the Customer fails to take delivery of EC ordered by the Customer or fails in any way to complete delivery or to frustrate delivery taking place, SIL may nonetheless notify the Customer that it was ready willing and able to complete delivery and invoice the Customer as if delivery had occurred with payment of such invoice due as set out above on the basis that delivery did take place even though it has not. The Customer will indemnify SIL for all costs, losses and expenses incurred by SIL in dealing with the Customer's failure to complete delivery. If the Customer has not remedied the failure to complete delivery within 7 days of the failure occurring, SIL is authorised to sell the EC to third parties and will not be liable to the Customer for any subsequent inability to supply to the Customer and the Customer is further liable to indemnify SIL for all costs, losses and expenses sustained by SIL in doing so.
- 10.11 Any employee or contractor or representative of the Customer who wishes to access the Facility must at all times be a Solexin Approved Operator and wear and use all PPE directed by SIL without limiting any additional PPE which such person(s) may also consider appropriate to use.
- 10.12 Where delivery takes place using SIL's 20 foot High Cube Bulk Containers, the Customer shall take all steps to ensure the safety and proper use and operation of such containers while in the Customers possession and shall at its own cost return the containers to the Facility promptly in accordance with the timeframe for use set out in the Quotation.. In default of the Customer complying with its obligations under this clause SIL is authorised at the Customers expense to take all steps necessary to retake possession of the containers. At all times the Customers possession of the containers is as a bailee only.
- 11. DISCREPANCY IN ENVIROCUTTER SUPPLIED**
- 11.1 If the Customer claims there is a discrepancy of greater than zero point five percent (0.5%) between the quantity of the EC on the

Invoice and the quantity of the EC supplied, the Customer must notify SIL in writing of this claim within 4 hours of the delivery of the EC taking place. SIL will investigate and if satisfied in its reasonable opinion that a discrepancy of greater than zero point five percent (0.5%) has occurred will adjust the invoice issued on a pro-rata basis to compensate the Customer for EC not supplied over and above the zero point five percent (0.5%) discrepancy. Any claimed discrepancy notified later than 4 hours following delivery will not be accepted or investigated.

## 12. ENVIROCUTTER SPECIFICATION AND HANDLING

- 12.1 SIL will use its reasonable endeavours to formulate EC to the specification set out by SIL in the Technical Data Sheet and Safety Data Sheets published by SIL at the time of issuing any Quotation.
- 12.2 The Customer will store, handle and use EC at all times in compliance with the Technical Data Sheet and Safety Data Sheets issued by SIL. This obligation is in addition to all obligations imposed by any law or regulation for the time being on the Customer in relation to its storage handling and use of EC.

## 13. PERSONAL PROPERTY SECURITIES ACT 1999

- 13.1 The Customer grants to SIL a Security Interest in respect of the EC supplied by SIL to the Customer. The Security Interest secures performance of the Customer's obligation to pay the purchase price for the EC supplied by SIL to the Customer. The Customer will do such acts and provide such information as is reasonably required to enable SIL to perfect its Security Interest created by this Agreement under the PPSA and to obtain a purchase money security interest (as that term is defined under the PPSA), upon request by SIL.
- 13.2 The Customer waives any right to receive a copy of a verification statement under the PPSA and agrees, in respect of this Agreement, to the extent permitted by law, that, as between the Customer and SIL:

(a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;

(b) The Customer will have none of the rights referred to in paragraphs (a), (c) and (d) of section 107(2) of the PPSA; and

(c) where SIL has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.

- 13.3 The Customer must pay any cost, charges and expenses incurred by SIL, including reasonable legal costs on a solicitor-own client basis, arising from any failure by the Customer to comply with this clause 13, any action taken by SIL to protect its position under the PPSA required due to any failure by the Customer to comply with this clause.

- 13.4 The Customer will not change its name without first notifying SIL in writing of the proposed name change and the new name at least seven (7) days before the changes take effect.

## 14. ENVIROCUTTER SHORTAGE

- 14.1 If there is a shortage of EC, or if SIL believes there may be a shortage of EC, SIL may distribute the available EC to any of its customers (including the Customer) in any quantity and in any manner it considers appropriate.

## 15. FURTHER SUPPLY

SIL is under no obligation to supply a greater quantity of EC than is specified on the Quotation issued to the Customer.

## 16. WARRANTIES AND REPRESENTATIONS

- 16.1 No warranty or representation other than as set out in these T&Cs is made either express, or implied to the Customer, by statute, at common law or otherwise with respect to EC, or any other product, Goods and, or Services supplied by SIL or third party
- 16.2 To the extent permitted by law SIL does not warrant or represent either expressly, or impliedly as to fitness, suitability for any

purpose, tolerance for any conditions, composition, suitability of performance of EC and, or use with any other product. It is the Customer's responsibility to independently determine the suitability of EC for any particular purpose the Customer has and to test and verify the same.

- 16.3 To the extent permitted by law SIL is not liable for any direct or indirect loss or injury suffered by the Customer as a result of being exposed to EC, unless the loss or injury was directly caused by the gross negligence of SIL.
- 16.4 The Customer warrants that it has the power to enter into the contract governed by these T&Cs, it has obtained all the necessary authorisations to do so, and it is not insolvent and is able to make Payment when required.

## 17. LIMITATION OF LIABILITY

- 17.1 A Party (1st Party) will not be liable to the other Party (2nd Party), in contract, tort (including negligence), equity or breach of any statute (to the fullest extent permitted by law) or in any other action, for any loss, damage, cost or expense suffered or incurred by the 2nd Party in connection with any act matter or thing done or omitted to be done in relation to the supply of EC by SIL under this Agreement to the extent that such loss, damage, cost or expense is:

(a) caused or contributed to by an unlawful, or negligent act or omission of the 2nd Party.

(b) indirect or consequential loss or damage, including loss of profits, loss of income, or loss of productivity.

- 17.2 SIL will not be liable to the Customer, in contract, tort (including negligence), equity for breach of any statute (to the fullest extent permitted by law) or in any other action, for any loss, damage, cost or expense whatsoever or howsoever suffered or incurred by the Customer in relation to the EC supplied by SIL to the Customer where such loss, damage, costs or expense is:

(a) directly or indirectly, caused or contributed to by the addition of any additive, supplement or any other thing by the Customer or any other person to the EC after Delivery; or

(b) for any claim arising from the storage or use of EC otherwise than in accordance with the Technical Data Sheet and Safety Data Sheet supplied by SIL to the Customer.

- 17.3 The parties agree that SIL's liability to the Customer in relation to the supply of EC, to the extent that such liability is not excluded under this Agreement, and whether that liability arises under contract, tort (including negligence), equity for breach of any statute (to the fullest extent permitted by law) or in any other action, will be limited to, and not exceed the purchase price of the particular shipment of EC to the Customer giving rise to the liability.

- 17.4 For the avoidance of doubt the parties acknowledge that it is their intention that the limits set out above apply as a total limit on liability no matter whether a claim arises in relation to this Agreement, or in any other manner.

- 17.5 Any Party seeking to claim against the other Party under this Agreement must use reasonable commercial endeavours to mitigate the effects of the matter giving rise to the claim.

## 18. CONSUMER GUARANTEES ACT 1993

- 18.1 The Customer agrees the supply of EC will only ever be for the purposes of a trade or business, and accordingly the Customer acknowledges that the provisions of the *Consumer Guarantees Act 1993* do not apply.

## 19. INSURANCE

- 19.1 The Customer will ensure that it has in place both adequate public liability insurance for a minimum amount of NZ\$5 million and



sufficient motor insurance cover to protect the Customer and SIL in the event of an incident at the Facility.

## 20. VARIATION

- 20.1 SIL may at any time without notice, vary these T&Cs, and any such changes are effective immediately (but not retrospectively for any Orders in place) on being posted to SIL's website. It is the Customer's responsibility to keep itself informed of any changes to these T&Cs.
- 20.2 SIL will make reasonable efforts to directly notify the Customer of any changes to these T&Cs. Failure to notify the Customer of any changes to these T&Cs does not make the changes invalid and, or unenforceable.

## 21. TIME IS OF THE ESSENCE

- 21.1 Time is of the essence for each of the Clauses in these T&Cs, where time is a factor.

## 22. COMPLIANCE WITH LAWS

- 22.1 The Customer and SIL will comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that are applicable for the supply, use and storage of EC (such as but not limited to any health and safety laws).
- 22.2 The Customer will obtain (at its expense) before entering the Facility and taking delivery of EC all licences and approvals (including, but not limited to, local council permits) necessary for it to possess EC.

## 23. SEVERABILITY

- 23.1 If any of these T&Cs is held by a Court to be illegal or unenforceable, then that term and, or condition, or part of it, is to be severed from all other terms and, or conditions without effecting the validity or enforceability of the other T&Cs or, any part of them.

## 24. CONFIDENTIALITY

- 24.1 The Customer and SIL agree to keep any commercial arrangements made between them in relation to the supply of EC, strictly confidential.

## 25. PRIVACY ACT 1993

- 25.1 The Customer authorises SIL, or SIL's agent to:
- (a) access, collect, retain and use any information about the Customer:
    - (i) (including any information showing the balance of any overdue fines held by the Ministry of Justice or otherwise) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.

(b) disclose information about the Customer, whether collected by SIL from the Customer directly, or obtained by SIL from any other source, to any other credit provider, or any credit reporting agency for the purposes of providing, or obtaining a credit reference, debt collection or the notification of any default by the Customer.

- 25.2 Where the Customer is an individual the authorities under clause 25.1, are authorities or consents for the purposes of the *Privacy Act 1993*.

The Customer has the right to request from SIL a copy of any information which is held about the Customer by SIL, and it may request SIL to correct any incorrect information it is holding about the Customer.

## 26. DISPUTE RESOLUTION

- 26.1 If a non-monetary dispute arises between SIL and the Customer relating to these T&Cs, SIL and the Customer will initially endeavour to settle the dispute amicably by informal negotiation.
- 26.2 If the informal negotiations are unsuccessful after ten (10) Working Days of, one party notifying the other party of the dispute, both Parties agree to promptly appoint an independent mediator.
- 26.3 If mediation is unsuccessful within ten (10) Working Days of the independent mediator being appointed then, the Parties agree to resolve the matter in accordance with the *Arbitration Act 1996*, the decision of the arbitrator will be final and binding on the Parties.

## 27. WAIVER

- 27.1 The failure by SIL to enforce any provision of these T&Cs, is not to be treated as a waiver of that provision, nor will it affect SIL's right to subsequently enforce that provision.

## 28. SET-OFF

- 28.1 The Customer will not be entitled to set-off against, or deduct from the Price, any sums owed or claimed to be owed to SIL by the Customer, or to withhold payment of any invoice, because a part of it is in dispute.

## 29. SUB-LICENCE

- 29.1 SIL may license, or sub-contract all or any part of its rights and, or obligations under these T&Cs, without the Customer's consent.

## 30. FORCE MAJEURE

- 30.1 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, public health order or other event which is beyond the reasonable control of either of the Parties.

## 31. NO REPRESENTATION

- 31.1 Unless expressly authorised by SIL in writing, no party may make any representation, arrangement or agreement to sell EC on SIL's behalf.

## 32. CHANGE OF OWNERSHIP AND CONTACT DETAIL

- 32.1 The Customer will give SIL not less than ten (10) Working Days prior written notice of any proposed change in ownership of the Customer's business and, or any other change in the Customer's details (including but not limited to, a change in such Customer's name, address, contact phone or fax number(s), or business practice). The Customer will be liable to SIL for any loss incurred by SIL as a result of such Customer not complying with this clause.

## 33. COUNTERPARTS

- 33.1 These T&Cs may be executed in separate counterparts (and signature pages may be delivered by facsimile or email) all of which together evidence the same T&Cs.

## 34. GOVERNING LAW

- 34.1 These T&Cs will be governed and interpreted in accordance with the laws of New Zealand, and are subject to the jurisdiction of the courts of New Zealand.