

## Terms and Conditions of Purchase of the Imerys Fused Minerals Murg GmbH („Imerys“)

Unless agreed otherwise, the following terms and conditions shall exclusively govern all commissions and orders by Imerys, including those to be concluded in the future. Validity of any general terms and conditions of business or of delivery of the supplier is excluded, in particular also when notices of such terms and conditions have remained uncontested by us. Any declaration in which we take on obligations or give up rights shall be in writing and with the signature of two persons with the authority to do so. This stipulation shall also apply to any declaration stating the intent to deviate from this form.

### 1. Orders

Only written orders are binding for us. Oral agreements are advance notices of an order and only become legally binding upon subsequent written confirmation including a declaration of our order number. All documents relating to the order must cite our order number and our order mark.

Every order shall be confirmed without delay. If we do not receive a confirmation or other response within eight days, our order shall be considered accepted. Changes to that order require our written agreement in order to become effective. Unless agreed otherwise, prices quoted in our order shall be considered including packaging and freight prepaid to point of destination (delivery address) and are fixed prices.

### 2. Completion:

The delivery shall conform with our order in kind and quantity as well as in place and date of delivery. If the goods do not meet the standard (in whole or in part), the entire delivery may be returned. The agreed delivery or service shall not be passed on to subcontractors without our written agreement.

### 3. Period of delivery:

The agreed dates of delivery shall be adhered to, time always being of the essence in our orders. Earlier delivery shall only be admissible with our approval. Partial deliveries will not be accepted if

they were not demanded by us.

If a delivery is not made within the agreed period of delivery or on the agreed date of delivery, or if it is not complete, we reserve the right to rescind the order without prior notice. This does not affect our legal rights in such a case.

If the supplier can foresee that a delay will (likely) occur, written notice of this delay, including the reasons for and the expected duration of the delay, shall be given immediately.

We can exercise our legal rights of default and warranty claims without prior notice. This also applies when we have explicitly agreed with an advertised delay of delivery.

#### **4. Packaging and Freight:**

The goods shall be packaged in accordance with industry standards, appropriately and properly. Where packaging costs are charged to us, they shall at most be charged at cost.

Freight instructions given by us must be strictly adhered to. The supplier will be liable for damage occurring due to non-compliance. Postal delivery (e.g., parcels) must be dispatched full postage paid without exception. A notice of dispatch must be sent to us in all cases. Every delivery shall include a delivery notice (packing slip). If the delivery papers are missing, the delivery will be stored at the cost and risk of the supplier until the papers have arrived.

Cash on delivery shipments will only be accepted upon express agreement.

#### **5. Acceptance and Warranty:**

Unless agreed otherwise, the place of destination is also the place of completion. Risk passes over to us only upon proper acceptance at the place of destination, also where carriage paid delivery was not agreed upon. If the agreed goods and services have to be rendered or assembled at the place of completion, risk will pass over to us only after complete service or assembly and a faultless test run has been completed. Warranty periods begin in such cases only with the joint declaration of faultless operation.

Acceptance of the delivery as well as inspection of the amount, the condition, the quality and operation of the goods will take place at the place of delivery. Complaints regarding defects in quantity and apparent defects in quality will be filed within four weeks of acceptance. In the case of excess delivery we retain the right of return at the cost of the supplier. Other defects including the absence of warranted qualities or unapparent defects will result in a complaint within four weeks

after the discovery of the defect.

The supplier is liable for faultless quality and competent execution as well as performance-based and fail-safe operation and observance of all norms and regulations. The supplier shall supply us with any regulations regarding storage and operation unbidden together with the delivery; failure to do so will result in the supplier's liability for any damage arising out of our ignorance of these regulations.

If the supplier is not able to remedy defects in an appropriate period, which may from case to case be set by us, we reserve the right to choose between insisting on fulfillment of the order, price reduction, provision of replacement at the supplier's cost or withdrawal from the contract regardless of the nature and extent of the defect. This does not affect our right to demand compensation for the incurred damages. The period of warranty begins anew with each attempt at improvement that is undertaken.

The supplier is obliged to give notice to us of any defects discovered in the goods after delivery without delay. If any goods delivered to us prove to be faulty due to new insights, so that they can no longer be used or distributed by us, the supplier is obliged to take back all of our remaining stock at the original price of purchase.

If the planned processing of ordered goods in our plants is not possible due to unforeseeable circumstances (force majeure), we reserve our right to withdraw from the contract insofar. We will notify the supplier of such an event immediately upon the occurrence of the event, producing internationally customary evidence.

## **6. Billing and Payment:**

Invoices shall be sent to our purchasing department in triplicate after the delivery has been delivered and/or service has been rendered.

Accepted goods and services will be paid for after receipt of the invoice within 14 days less 3% discount or within 90 days without discount. The date of payment will not have any bearing on the delivery, warranty and replacement obligations of the supplier. Other conditions of payment, e.g., any conditions of payment that may be set forth the invoice, are not valid, unless they were agreed with Imerys in writing at the time of entering into the agreement.

Assignment of our liabilities is only possible with our express approval

## 7. General:

The supplier holds liability that the goods delivered are not in breach of existing patents or registered trademarks. The supplier obliges itself to indemnify and hold harmless Imerys of all claims made due to a breach of patent or registered trademark rights that have arisen out of use of the delivered goods.

All instructions, drawings, models and samples provided to the supplier by Imerys, as well as the drawings, models and samples produced by the supplier according to our instructions are and remain our (intellectual) property and may not be used for other purposes, be reproduced or passed on to third parties. They must be returned to us without delay upon completion of the delivery or, in case of non-performance of the delivery, immediately.

The supplier shall regard the order, the contract-related services and all related documents as trade secret and treat them with the according confidentiality.

There shall be no compensation of any kind for planning work, etc., unless expressly and in writing agreed otherwise. The business relationship must not be disclosed for purposes of advertising. The supplier pledges to adhere to the minimum labour standards set by the ILO and to oblige their own suppliers to adhere to these minimum standards by particular contractual stipulations. The supplier in particular pledges not to employ any children. The supplier shall ensure that their own suppliers shall also not employ any children. Any person under the age of fifteen years of age shall be deemed a child. Children are allowed to be employed as an exception at the age of fourteen years of age, if the country of production allows persons to work from the age of fourteen years onwards per law.

This English translation of Imerys' Terms and Conditions of Purchase is only for ease of reference; only the German language version shall be binding and govern the relationship of the parties.

## 7. Governing Law, Jurisdiction

German law shall exclusively apply, to the exclusion of the conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.

The sole legal venue shall be that court in Germany which is competent for the official place of business. However, Imerys reserves the right to also bring a claim to any other competent court.

## **8. Partial invalidity**

Partial ineffectiveness or partial invalidity of these terms and conditions of purchase affects neither the effectiveness nor the validity of all other terms and conditions.

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