

General Terms and Conditions of Sale and Delivery of the Imerys Fused Minerals Murg GmbH („Imerys“)

1. General

1.1. Unless explicitly agreed otherwise in writing, we sell exclusively according to the terms and conditions of sale of Imerys as set forth in detail below; these terms and conditions shall form an integral part of any agreement of sale or delivery with us even where the Buyer has not explicitly agreed to them. Buyers' terms and conditions of delivery, purchase or order are in any case not binding for Imerys, even when they form the basis of an order or are referred to in the order and when Imerys has not explicitly objected to their content. In the same way, the completion of the delivery or order does not constitute an acceptance of the Buyer's terms and conditions.

2. Offers and Orders

2.1. Our offers are always without engagement and subject to our terms and conditions. Offers of our representatives shall be confirmed by us in writing in order to attain legal validity. The same holds for all ancillary agreements and other commitments. An order shall only be considered legally valid and accepted when the acceptance has been declared by us in writing. Each declaration with which we take on obligations or give up rights must be in writing and bear the signature of two persons with the authority to make such a declaration. This also applies to any deviation from this form.

2.2. Unless agreed otherwise, deliveries of call-off agreements must be called off within twelve months of acknowledgement of the order. If the order is not called off within this period of time, Imerys retains the right to charge the Buyer for the remaining order.

3. Prices

3.1. The prices are net prices in Euro ex works (exw), according to the most current INCOTERMS. Transport and freight costs, packaging costs as well as further fees, taxes and charges are not included and shall be paid additionally by the Buyer.

3.2. All listed prices in printed goods, advertising materials and other public announcements are non-binding.

4. *Delivery*

4.1. Deliveries are made ex works (exw), according to the most current INCOTERMS. Place of completion for the delivery and place of passage of risk shall be the production facility of Imerys in Laufenburg, Germany.

4.2. Time of delivery shall be that day on which the goods are made available to the Buyer at the production facility as per agreement. Risk shall pass onto the Buyer at the time of making the goods available to the Buyer.

4.3. If shipping of the goods is agreed, we ship the goods at the cost and risk of the Buyer; therein we decide the way of shipping, the shipping route and the carrier.

4.4. Imerys retains the right to deliver in part and deliver in advance and issue an invoice on such deliveries separately.

4.5. Agreed deliveries that could not be completed or could not be completed on time due to force majeure, unforeseeable events or events beyond our control (e.g., at suppliers, their sub-suppliers or transport assignees) shall be considered suspended. This shall particularly be applicable in the case that despite careful stocking of raw materials, indicated raw material deliveries were not delivered to us and a replacement acquisition was not possible within the limits of proportionate effort. We shall notify the Buyer immediately upon the occurrence of such an event, producing the internationally customary evidence, as well as declaring, in the case of mere delay, a new date of delivery. We shall not be liable for non-performance or default. If deliveries are only partly affected by this, the rest of the contract shall not be affected by this occurrence.

5. *Complaint*

5.1. Our specifications regarding our products and methods are based on extensive research and application-technical experience. We convey these specifications, which do not constitute any

- 5.2. warranty of the properties of our products in speech and in writing according to the best of our belief. This does not discharge the users or operators of our products from the obligation to themselves verify the adequacy of the object of purchase for the purpose intended by them.
- 5.3. Complaints shall be lodged by the Buyer at the latest within ten working days after receipt of the goods in writing and including a detailed description of the defect, otherwise the goods shall be considered accepted. In the case of defects that could not be established despite appropriate investigation upon receipt of the goods, the complaint shall be lodged within ten working days of the occurrence of such a hidden defect, at the latest however before the end of the warranty period described in paragraph 5.3.
- 5.4. Buyer must claim his warranty rights by legal action, on the condition that a complaint was made within the allowed period, within a year of the goods having been made available to him. Buyer has the burden of proof. Imerys is liable exclusively for contractually agreed properties. All warranties shall be excluded if the goods have been handled or processed.
- 5.5. If goods have been delivered ex works with defects and these defects were the subject of a timely complaint, Imerys are free to choose whether those goods will be replaced or whether Buyer will be entitled to a reduction of price. The contract will in no case be revoked.

6. *Liability*

- 6.1. Imerys will be liable for damage outside of the scope of the product liability law in the case of intent or gross negligence. Liability for slight negligence, subsequent damage, purely pecuniary loss, lost profit, failure to attain savings, loss of interest payments and damages arising out of the claims of third parties against the Buyer is excluded. Any entitlements arising out of the title of indemnity are limited in amount to the order value.
- 6.2. Mandatory product liability regardless of negligence or fault are limited to injury to persons. Imerys is not liable for damage to property. This liability limitation shall be forwarded in full to any buyers, including notification of the obligation for further forwarding. Failure to comply with this contractual obligation results in the Buyer's liability for damages towards us. Buyer undertakes to indemnify us and hold us harmless from and against any claims of any kind in

this regard by third parties. Any recourse claims that Buyers or third parties make against us under the title of product liability according to the product liability law (PHG) are excluded unless the claimant proves that the fault was caused within our scope and due to at least gross negligence.

7. Retention of Title

- 7.1. Until full payment of the goods including all ancillary costs, the delivered goods shall remain our property. If Buyer handles or processes the goods under retention of title, or connects them with other items, the retention of title shall extend to the product of the handling or processing, from which we can chose for segregation up to the value of the goods delivered by us, if necessary.
- 7.2. Buyer is obliged to meet all necessary measures to secure of the retention of title. Where third parties are involved, Buyer is obliged to inform these third parties of Imerys' proprietorship of the goods and to notify us immediately in which way the involvement occurred and by whom, so Imerys can claim its proprietorship. Buyer is liable for any loss due to the third party's inability or failure to be obliged to replace the costs of the claim to Imerys.
- 7.3. If the goods are sold onwards before full payment including ancillary costs, Imerys shall be entitled to the purchase price resulting from the sale to third parties instead of the retained title. This assignment for security shall be noted in the business books of the Buyer, including the date of the signing of the contract and the exact company name of Imerys (cessionary). The Buyer is obliged to notify Imerys of the effected transfer and the third party of the transfer immediately, at the latest however upon signing of the contract with a third party. The Buyer furthermore gives Imerys the irrevocable authority to inform the third party of the transfer and is obliged to keep any proceeds separately and to pay these out to Imerys upon the due date.
- 7.4. Any costs arising out of a legal claim shall be replaced by the Buyer. The Buyer is obliged to insure any goods under retention of title at their own cost. The Buyer is not allowed to encumber the goods or assign the goods to third parties for security or to dispose of the goods in any other way than by sale within the frame of a proper business activity for the benefit of a third party. The legal consequences of processing described above also apply to bonding,

mixing or blending of the delivered goods.

8. *Nonperformance*

If the Buyer infringes against any of the arrangements concluded, we are entitled to rescind the contract. The costs for returning the goods shall be met by the Buyer, who shall also be liable for all damages arising out of the infringement against the concluded arrangements.

9. *Conditions of Payment*

9.1. Payment for our invoices is generally due upon receipt without any discount. Payment delay results in the lawful default interest of eight percentage points above the base interest rate as well as the defaulter's obligation to replace necessary costs arising out of extra-judicial execution. This includes the costs for any debt collection institution that may have been commissioned. Drafts and cheques shall only be accepted on account of performance. Any payment fees of any kind at all shall be covered by the Buyer. Payments made by the Buyer will - regardless of their dedication - be charged first to outstanding interests and charges and then to cover the oldest outstanding bills. Place of payment shall be Laufenburg, Germany.

9.2. If the agreed conditions of payment are not adhered to or if the Buyer's pecuniary circumstances deteriorate significantly or if it becomes apparent after the signing of the contract that the pecuniary circumstances were already adverse at the time of signing of the contract, Imerys is entitled to immediately demand payment of all outstanding bills and to refuse further services until reciprocation has occurred or reciprocation has been guaranteed. If agreed conditions of payment are not fulfilled, payment is delayed or the agreed term of payment is not adhered to, or the Buyer is unable to pay or is overindebted, Imerys can rescind from any contract without prior notice.

9.3. Setting-off in respect of the Buyer's claims against Imerys' claims from delivered goods is excluded, unless the claim is accepted by Imerys or finally set by legal judgement.

9.4. If there is no VAT to be charged for deliveries to a Buyer in a EU member state, the Buyer shall provide Imerys immediately and unbidden with the evidence Imerys requires by legal stipulation in order to demonstrate the exemption from taxation of this delivery vis-à-vis the

fiscal authorities. This applies in particular to the proof of the goods' shipment to another EU member state, the value-added tax (VAT) number or a personal tax exemption of the Buyer.

10. *Governing Law*

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

11. *Place of Jurisdiction*

The exclusive place of jurisdiction for all disputes arising directly or indirectly from this agreement, in particular the validity of these terms and conditions of sale and delivery, shall be the court materially competent for Laufenburg, Germany. However, Imerys reserves the right to also bring a claim appeal to any other locally competent court.

12. *Miscellaneous*

12.1. Partial ineffectiveness or partial invalidity of these terms and conditions of sale and of delivery affects neither the effectiveness nor the validity of all other terms and conditions. In place of any ineffective or unenforceable stipulation, whatever legally admissible stipulation comes economically closest to the ineffective or unenforceable stipulation shall be considered agreed.

12.2. Any waiver of these terms and conditions of delivery and sale or of any formal requirements set forth in these terms and conditions of delivery and sale must be confirmed in writing by both parties to the contract. The Buyer acknowledges that Imerys' employees or third parties are not entitled to make any assurance that differs from the principal obligations agreed in the contract (e.g., conditions of payment, quality assurances, conditions of delivery).

12.3. Imerys retains the right to correct obvious errors (spelling errors, arithmetic errors) on offers, estimates, delivery slips, bills, etc. at any time.

12.4. The Buyer is only allowed to use the Imerys trademark after prior written agreement by Imerys.

12.5. Imerys is entitled to change these terms and conditions of sale and delivery. The Buyer shall be informed of these changes and the time of the change at least one month prior to the time of the change. The change shall come into effect unless the Buyer objects to the change within one month of notification. Imerys shall make the Buyer aware of this option to object.

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

13. *Partial ineffectiveness*

13.1. Partial ineffectiveness or partial invalidity of these terms and conditions of sale and of delivery affects neither the effectiveness nor the validity of all other terms and conditions. In place of any ineffective or unenforceable stipulation, whatever legally admissible stipulation comes economically closest to the ineffective or unenforceable stipulation shall be considered agreed.

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