

STANDARD TERMS AND CONDITIONS OF SALE – Imerys Fused Minerals Zschornowitz GmbH

Every sale of any product (“**Product**”) made by **Imerys Fused Minerals Zschornowitz GmbH**, a German company whose registered office is at Burgkennitzer Strasse 17, 06791 Zschornowitz, Germany and registered with the Companies Registry under number HRB 16567 (the “**Seller**”) is governed by these terms and conditions of sales (the “**GTCs**”). Therefore, the sole fact of placing an order implies full and unreserved acceptance by the Purchaser of these said GTCs. No special conditions shall prevail over these GTCs unless the Seller expressly so agrees in writing. These GTCs take precedence over any terms and conditions of purchase and all other documents particular to the Purchaser.

1. Orders

No order shall be binding on the Seller until expressly confirmed in writing by the Seller. Unless stipulated otherwise, Seller’s offers are valid for a period of thirty (30) days only and within the limit of available stocks.

In the event of a delay in carrying out the order attributable to the Purchaser, the Seller may cancel ipso jure and without prior formal notice all or part of the order by notice with immediate effect, and any sums that the Purchaser may have paid shall accrue to the Seller as compensation, unless the Purchaser’s fault is not at stake.

2. Product Specifications –Warranty

The Seller warrants that the Products delivered shall comply in all materials respects either with the Seller’s standard specifications at the time the related order is received or with the specifications agreed in writing with the Purchaser. The Seller may change such specifications at any time, provided that these changes are reasonable to the Purchaser taking into account its interests and in that event, will notify the Purchaser in advance.

The Seller makes no other warranty, express or implied, concerning the Products.

It is the Purchaser’s responsibility to ensure that (a) the Products ordered are fit and suitable for its own products, production methods and intended purposes and (b) the use of the Products complies with all applicable laws and regulations (including consumer protection laws) and does not infringe third party intellectual property rights. **Consequently the Seller expressly disclaims any legal warranty in regard to (a) and (b) above and the Products are used by the Purchaser at its sole risk.** The Purchaser shall indemnify the Seller against all third parties claims in connection with the sale by the Purchaser of any item incorporating the Products. No statement(s) made in relation to the Products is intended or shall be construed as inducing infringement of a valid patent.

3. Complaints

3.1. The Purchaser shall immediately after receipt inspect the Products or have the Products inspected as to apparent defects or non-compliance (including weight) of the Product. The Purchaser loses the right to claim that a defect exists if it does not give notice thereof to the Seller in writing immediately, and at the latest within eight (8) days of delivery of the Products; concealed defects must be notified in writing within thirty (30) days of Product delivery. No interventions shall extend these periods of time.

3.2. In the event of damage or loss while in transit, the Purchaser must take up these concerns and exercise any recourse it may have against the Carriers directly.

3.3. The Seller’s warranty above is subject to the Purchaser (a) supplying all required evidence of any non-compliance or defects found, (b) co-operating in the inspection and investigation of the said defects by the Purchaser, and (c) ensuring that no intervention on the Products that are the subject of a claim is carried out, without the Seller’s prior written agreement. No Product may be returned without the Seller’s prior agreement.

3.4. Nothing in these GTCs shall limit or exclude the Seller’s liability for:

3.4.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

3.4.2. fraud or fraudulent misrepresentation; or

3.4.3. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

3.5. Subject to clause 3.4. above :

3.5.1. the Seller shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for

a. defects caused by use of the Products, including handling, storing subsequent to the transfer of risks by the Purchaser or third parties that is faulty or non-compliant with regard to the Seller’s recommendations and prudent industry practice; it being understood that in any event, all claims made after the Products have been resold by the Purchaser, or altered contrary to the Seller’s instructions in any form whatsoever shall be null and void, and

b. any loss of profit, or any indirect or consequential loss arising under or in connection with the contract; and

3.5.2. the Seller’s total liability to the Purchaser in respect of all other losses arising under or in connection with the order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in any event be strictly limited, to either the replacement or the refund of corresponding Products, as the Seller shall see fit.

4. Deliveries – Shipment

Time for delivery shall not be of the essence. Delivery times are given as an indication only and may depend on various factors such as availability of Seller’s stocks. Overrunning delivery time do not give rise to payment of any compensation, withholding of payment or cancellation of current orders. Unless agreed otherwise by the Parties, Products are delivered Ex-Works INCOTERMS® (ICC, 2010). Products are loaded and transported at the Purchaser’s risk and liability. It is the Purchaser’s responsibility to contract for transport and to take out all necessary insurance to cover damage to, as well as caused by, the Products

The Seller shall be under no obligation to deliver the Products if the Purchaser is in breach of any of its obligations towards the Seller.

5. Weights – Quantities

The Purchaser may not reject the Products on grounds of weight loss or shortage.

All bulk Products delivered are sold on the basis of the weight recorded by the Seller at the time of dispatch. Small weight losses arising during transit have been taken into account in the price and no claim can be made in respect of weight loss unless check weighing at the Purchaser’s works indicates a weight loss in excess of what is acceptable commercial practice for the concerned Products.

6. Prices

The Products are sold at the prices agreed at the time an order is accepted. Unless agreed otherwise, prices are exclusive of taxes, duties, carriage, insurance and packaging.

7. Invoicing – Payment – Penalties

An invoice shall be either enclosed with every delivery or separately sent, and shall include all required references, in particular any discount conditions in case of early payment.

Unless agreed otherwise by the Seller in writing, all payments are due within thirty (30)

days of the date the invoice is issued, without discount. Payments shall be made in Euro (€). Payments by wire transfer shall be deemed executed when the Seller’s account is credited with cleared funds. The Purchaser must perform its payment obligations notwithstanding any dispute or claims arising in relation to Purchaser’s orders. In the event the Purchaser does not pay all amounts at their due date: (a) all other amounts due by the Purchaser to the Seller for any other reason whatsoever shall automatically and immediately become payable, (b) the Seller may suspend all current orders and/or claim advance payment for any current or new order from the Purchaser, and (c) the Seller may by notice cancel ipso jure the sale forty-eight (48) hours after notice to pay has remained without effect and apply for a summary court order to return the Products.

Furthermore, any amount not paid at its due date, shall bear interest at the rate of nine percent (9 %) per annum above the current base rate, increased by a lump sum for recovery costs of forty euros (40€) per delayed invoice. Late payment interest and the lump sums shall be paid by the Purchaser immediately and without need for prior notice from the Seller from the due date until the amount due has been paid in full.

The remedies set out above are without prejudice to any other remedy available to the Seller, including any claims for compensation or damages.

8. Packaging

Unless agreed otherwise in writing, the Seller does not take back packaging. It is therefore the Purchaser’s responsibility to deal with the use, recycling, storage and/or destruction of such packaging. No packaging displaying the Seller’s trademark may be used for anything other than the Seller’s Products.

9. Reservation of title

Title to the Products shall pass to the Purchaser only upon full payment of their price, principal and incidentals, it being expressly stipulated that remitting a document merely creating an obligation to pay (bill or other) does not constitute payment.

Until full payment of these amount, the Purchaser shall identify the Products delivered; failing which the Seller may claim indemnification. Processing and adaptation of the Products which are subject to a retention of title shall always occur for the Seller as owner according to § 950 BGB, however, without any obligation for the Seller. If the Products processed in this manner are combined by the Purchaser with other works or other goods, Seller has a right of joint ownership to the new object in the ratio of the invoice value of the Products which are subject to retention of title to the value of the other goods and the processing value. Should the Seller’s title lapse due to combination, intermixture or processing, then the Purchaser is bound, at the time of the contractual agreement, to transfer his title to the new goods to the extent of the invoice value of the Products subject to the retention of title, and retain this for the Seller free of all charges.

The Purchaser shall inform the Seller without delay in the event of an attachment order or any other third-party intervention affecting the Products, so that the Seller may apply to have the order set aside and preserve its rights. The Purchaser further agrees not to use the Products to create any charge or assign title to the Products as a security.

10. Force Majeure

The Seller shall not be liable for non-performance of all or part of its obligations where such non-performance results from the occurrence of a case of force majeure. Force majeure is an event which is not within Seller’s reasonable control and could not reasonably be prevented, avoided or removed by Seller and which causes the Seller to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligation; such as, but not limited to: war, riot, strike, lock-out, acts of governmental authorities, Act of God, fire, natural disasters, exceptional weather conditions, raw material shortage, etc.

If such an event results in the suspension of the performance by the Seller of its obligations for a period in excess of ninety (90) consecutive days, any Party may cancel the sale by notice and without compensation being due by either Party.

11. Applicable law – Dispute resolution

These GTCs are subject to German Law, excluding its conflict of laws provisions. The Parties expressly exclude the application of the United Nations Convention on the International Sale of Goods of April 11, 1980.

The Parties shall first attempt to settle any disputes arising out of or in connection with these GTCs amicably.

If the Parties have not reached an agreement within sixty (60) days from the receipt of the first registered letter with acknowledgment of receipt sent by one Party to the other Party to inform of the dispute, then the dispute at stake shall be of the exclusive competence of the commercial court within whose jurisdiction the Seller has its registered office.

12. Intellectual Property Rights – Confidential information

All samples, proposals, drawings, documentation prepared or disclosed by the Seller in connection therewith as well as patents, trademarks, tradenames, copyrights, designs in relation to the Products shall be and remain the absolute property of the Seller and are deemed confidential, whether or not marked as such. The Purchaser may not therefore disclose the same to any third parties.

The Purchaser shall not have any claim or right or property therein and shall not register or cause to be registered in any part of the world any patent, trademark, tradename, copyright or design similar to, or any imitation of, such patent, trademark, tradename, copyright or design.

The Purchaser, either directly or through a third party, shall not reverse engineer or chemically or otherwise analyse for reverse engineering purposes, any samples of the Products and will not use any information related to the Products for the production of Products similar or equivalent to the Products or the supply thereof from a competitive source. This limitation shall not prevent analysis in the case of a bona fide product liability dispute.

The Parties agree to hold all confidential information of the other Party in trust and confidence and to disclose it to their respective employers, consultants, and legal counsel only on a need-to-know basis.