

## **GENERAL TERMS AND CONDITIONS OF SALE OF MINERAUX B.V.**

These General Terms and Conditions of Sale are of Mineraux B.V., Tauber 52 Unit B2.24, 2491 DA The Hague, Commercial Register no.: 830093221, and its subsidiaries (jointly: **Seller**).

### **1. General**

- 1.1 These General Terms and Conditions of Sale (**Conditions**) apply to all quotations, proposals, sales and deliveries of goods and/or services (the goods and services herein both separately and jointly referred to as: **Goods**) from or on behalf of Seller to customer (**Customer**).
- 1.2 Seller hereby expressly rejects the applicability of any general conditions of the Customer. Neither Seller's failure to explicitly reject the terms and conditions of Customer, nor Seller's commencement of performance shall be deemed or constituted as acceptance of any of Customer's terms and conditions. Any communication or conduct of Customer which confirms an agreement for the delivery of Goods by Seller, as well as acceptance by Customer of any delivery of Goods from Seller shall constitute an unconditional acceptance by Customer of these Conditions.
- 1.3 By contracting on the basis of these Conditions, Customer agrees to the applicability thereof to any future dealings between the parties, even if this is not expressly stated.
- 1.4 Seller is entitled to update and/or amend these Conditions regularly, and as of the moment of notifying Customer of such update or amendment or by sending Customer the updated or amended Conditions these revised Conditions shall apply to all dealings between Seller and Customer.
- 1.5 Seller and Customer agree that valid, enforceable and binding obligations may result from electronic means of communication. Any electronic communication between Seller and Customer shall be considered to be in writing.

### **2. Quotations, orders and confirmation**

- 2.1 Quotations and proposals made by Seller in whatever form, are not binding upon Seller and merely constitute an invitation to Customer to place an order. All quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller by a written order confirmation. Seller is always entitled to refuse an order without indication of its reasons.
- 2.2 Statements and agreements made by Seller's employees, officers, representatives and/or agents are not binding upon Seller unless and only to the extent that such statements are confirmed or made in writing by duly authorized representative(s) of Seller.
- 2.3 Samples supplied to Customer are supplied solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods.

### **3. Prices**

- 3.1 Prices for the Goods are as set out in Seller's order confirmation, or in the absence thereof in Seller's published price lists.
- 3.2 Unless agreed otherwise, Seller's prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Goods or the delivery thereof (**Taxes**). Taxes levied in connection with the sale of the Goods to Customer shall be for Customer's account and shall be added to each invoice or separately invoiced by Seller to Customer.
- 3.3 Unless fixed prices have been agreed, Seller is entitled to increase the price of the Goods not yet delivered in the event cost price determining factors have increased, resulting in an overall cost price increase of 2.5 % or more. These factors include but are not limited to raw and auxiliary materials, energy, products obtained by Seller from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Seller shall notify Customer of such increase.

### **4. Payment**

- 4.1 Unless otherwise agreed, Customer shall pay Seller's invoices within thirty (30) days of the invoice date by means of transfer into the bank account mentioned on the invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or counterclaim.
- 4.2 Unless otherwise agreed all payments shall be made in Euro.

- 4.3 Customer must notify Seller of complaints with respect to Seller's invoices within eight (8) days from the invoice date, after which Customer shall be deemed to have approved the invoice
- 4.4 With regard to the payment of Seller's invoices Goods, time is of the essence and Seller may, without prejudice to any other rights of Seller, charge interest on any overdue payment at the rate of the Dutch statutory interest for commercial transactions.
- 4.5 All costs and expenses that Seller may incur with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account.
- 4.6 Every payment by Customer shall in the first place serve to pay the judicial and extra-judicial costs and the interest owed by it and afterwards shall be deducted from the eldest outstanding claim regardless of contrary advice from Customer.

## **5. Delivery and acceptance**

- 5.1 Unless otherwise agreed, all deliveries of goods shall be Ex Works (INCOTERMS 2020) at Seller's production facility.
- 5.2 Delivery dates and times indicated by Seller are estimates only and shall not be of the essence.
- 5.3 Seller is entitled to deliver the Goods as stated in Seller's order confirmation in parts and to invoice each delivered part separately.
- 5.5 Seller's liability for damages caused by any delay in delivery are explicitly excluded. Delay in delivery of any Goods shall not relieve Customer of its obligation to accept delivery thereof. Deviations in quantity of Goods delivered from that stated in Seller's order confirmation shall not give Customer the right to reject delivery of the Goods and Customer shall be obliged to pay the price agreed for the Goods for the quantity of Goods delivered.

## **6. Examination and acceptance**

- 6.1 On delivery and during the handling, use, processing, transportation, storage and sale of the Goods (**Use**), Customer shall examine the Goods and satisfy itself that the Goods delivered meet all contractual requirements.
- 6.2 Complaints about the Goods must be made in writing and must reach Seller not later than seven (7) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim was or ought to have been apparent, but in no event later than six (6) months from the date of delivery of the Goods. Use or processing of the Goods shall be deemed to be an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods.
- 6.3 Examination of whether delivered Goods conform to the agreed specifications as stated in Seller's order confirmation or, in the absence of agreed specifications, to the most recent specifications held by Seller at the time of delivery of the Goods (**Specifications**), shall be done solely by analysing the samples or records retained by Seller and taken from the batches or production runs in which the Goods were produced in accordance with the methods of analysis used by Seller. Goods that Seller consents or directs in writing to be returned shall be returned to Seller at the risk of Customer, to the destination directed by Seller.
- 6.4 Defects in parts of the Goods delivered do not entitle Customer to reject the entire delivery of the Goods. Complaints, if any, do not affect Customer's obligation to pay as defined in article 4. Upon receipt of a notice of defect, Seller is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.

## **7. Transfer of risk and property**

- 7.1 The risk of the Goods shall pass to Customer on delivery.
- 7.2 Goods for which delivery is suspended pending payment by Customer, as well as Goods of which delivery is wrongfully rejected or not accepted by Customer, shall be held and stored by Seller at the risk and expense of Customer.
- 7.3 Title to the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with Seller unless and until Seller has received payment from Customer of all sums due for the Goods and other orders placed with Seller, including all secondary costs such as interest, charges, expenses etcetera.

- 7.4 In the event of termination on the basis article 16 of these Conditions, Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate re-delivery of the Goods for which it may invoke a retention of title.
- 7.5 As long as title to the Goods remains with Seller pursuant to this article 7, Customer is entitled to use the Goods solely to the extent required in its ordinary course of business, and, to the extent possible, shall: (i) keep the Goods separate and in a clearly identifiable manner; (ii) notify Seller immediately of any claims by third parties which may affect the Goods; and (iii) adequately insure the Goods.

## **8. Modifications and information, indemnity**

- 8.1 Unless firm Specifications have been agreed for a certain period or quantity of Goods, Seller reserves the right to change or modify the Specifications, construction and/or manufacture of Goods and to substitute materials used in the production and/or manufacture of Goods from time to time. Customer acknowledges that data in Seller's catalogues, specification sheets and other descriptive publications distributed or published on Seller's websites, may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of Seller in relation to the Specifications, the Goods and the Use thereof shall be furnished for the accommodation of Customer only.
- 8.2 Customer must utilise and solely rely on its own expertise, know-how and judgement in relation to the Goods and Customer's Use thereof and in Customer's application of any information obtained from Seller for the purposes intended by Customer. Consultation provided by Seller shall not give rise to any additional obligations. Details and information provided with regard to the suitability and Use of the Goods shall not be binding and Seller does not assume any liability based on such consultations.
- 8.3 Customer shall indemnify and hold Seller harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Goods, Customer's Use thereof and/or Customer's use or application of any information disclosed or provided by or on behalf of Seller.

## **9. Cancellation**

Customer's wrongful non-acceptance or rejection of Goods or cancellation or repudiation of an order confirmed by Seller shall entitle Seller to recover, in addition to any other damages caused by such action: (i) in the case of Goods which reasonably cannot be resold by Seller to a third party, the price of such Goods; or (ii) in the case of Goods which can be resold by Seller or where an action for the price is not otherwise permitted by law, damages equal to fifty percent (50%) of the price for the Goods as liquidated damages.

## **10. Limited warranty**

- 10.1 Seller solely warrants that on the date of delivery the Goods shall conform to the Specifications. If and to the extent Goods fail to meet such warranty, as shall be determined in accordance with the provisions of article 6 of these Conditions, Seller may at its own option within a reasonable time either repair or replace the Goods at no charge to Customer, or issue a credit for any such Goods in the amount of the original invoice price. Accordingly, Seller's obligation shall be limited solely to repair or replacement of the Goods or for credit of the Goods.
- 10.2 However, Seller's obligation to repair, replace, or credit shall be contingent upon receipt by Seller of timely notice of any alleged non-conformance of Goods and, if applicable, the return of the Goods, in accordance with article 6 of these Conditions. The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the Goods.

## **11. Limitation of liability**

- 11.1 In the event of a claim for breach of contract, tort or for any other legal reason, the liability of Seller will in all circumstances be limited to direct damages and to what Seller can recover under his insurances. In the event of a lack of cover under insurance, the liability of Seller shall under no circumstances exceed the sum of Customer's payments for the Goods ordered from Seller that are the subject of the claim.
- 11.2 In no event shall Seller be liable to Customer or any other person for any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profits, work stoppage, production failure, impairment of other goods or otherwise, and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.
- 11.3 No action against Seller shall be brought by Customer unless Customer first provides written notice to Seller of any claim alleged to exist against Seller within thirty (30) days after the event complained of first becomes known to

Customer and an action is commenced by Customer within twelve (12) months after such notice. Customer's failure to timely send such notice or commence an action will result in claims being time-barred.

## **12. Force majeure**

12.1 Neither party shall be liable for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws, statutes, ordinances, regulations, legislative measures, acts of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors (**Force Majeure**).

12.2 Upon the occurrence of any event of Force Majeure, the affected party shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under vis-à-vis the other party. In the event of any delay, Seller's obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than two (2) months after the agreed delivery date, either Party is entitled to cancel outstanding orders and deliveries without any liability to the other Party.

## **13. Intellectual property**

13.1 Seller owns trademarks, copyrights and other intellectual property rights with value to its business. Customer will refrain from any infringement of Seller's intellectual property rights, trade secrets and knowhow and use the Goods delivered by Seller solely for their intended use as communicated to Seller.

13.2 Customer may only use Seller's trademarks solely upon acquiring Seller's written license for such use and in accordance with Seller's instructions.

13.3 The sale of Goods shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Goods, and Customer expressly assumes all risks of any intellectual property infringement by reason of its importation, Use of the Goods, whether singly or in combination with other materials or in any processing operation.

13.4 All intellectual property rights to Goods, analysis, reports and other works developed or created by Seller on instruction or on the basis of information provided by Customer or in relation to Customer's orders for Goods will exclusively be owned by Seller.

## **14. Confidentiality**

14.1 The value of Seller's business is predominantly determined by the trade secrets and other confidential information Seller owns (**Confidential Information**). Customer may receive from or on behalf of Seller Confidential Information, marked as confidential or of which Customer should reasonably understand that this is of a confidential nature for Seller. Customer will use Seller's Confidential Information solely for the purpose for which this is made available, not reverse engineer this nor have this reverse engineered by third parties, and only disclose this Confidential Information to persons who have a need to know this information for Customer's Use of the Goods and are bound by confidentiality obligations with at least a similar degree of protection for Seller as this provision.

14.2 Article 14.1 does not apply to Confidential Information for which Customer can evidence, (i) that this was known to Customer prior to disclosure to him by or on behalf of Seller, (ii) was publicly known prior to its disclosure, or (iii) becomes publicly known after its disclosure, otherwise than due to a breach of Customer of this provision.

## **15. Compliance with laws and standards**

Seller makes no promise or representation that the Goods shall conform to any law, statute ordinance, regulation, code or standard (**Laws and Standards**), unless expressly stated in Seller's order confirmation or in the Specifications. Customer acknowledges that the Use of the Goods may be subject to requirements or limitations under Laws and Standards. Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with its intended Use of the Goods; and (ii) obtaining all necessary approvals, permits or clearances for such Use.

## **16. Suspension and termination**

16.1 If Customer is in default with the performance of its obligations towards Seller, or (b) if Seller has reasonable doubts with respect to Customer's performance of its obligations to Seller and Customer fails to provide to Seller adequate

assurance (such as by means of ongoing credit approval) of Customer's performance before the date of scheduled delivery and in any case within fifteen (15) days of Seller's demand for such assurance; or if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of Seller, Seller may by notice in writing forthwith (i) demand re-delivery and take repossession of any delivered Goods which have not been paid for, for which purpose Customer hereby grants an irrevocable right and licence to Seller to enter upon all or any of the premises where the Goods are or may be located and all costs relating to the recovery of the Goods shall be for the account of Customer; and/or (ii) suspend its performance or terminate outstanding orders or deliveries of Goods unless Customer makes such payment for Goods on a cash in advance basis or provides adequate assurance of such payment for Goods to Seller; without any intervention of courts being required and without liability for Seller of whatsoever kind arising out of or in connection with such suspension or termination.

16.2 In any such event of (i) and/or (ii), all outstanding claims of Seller shall become due and payable instantly in proportion to the quantity of Goods delivered to Customer and not re-possessed by Seller.

## **17. Miscellaneous**

17.1 Seller and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal or agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.

17.2 Any failure by Seller to enforce a provision of these Conditions shall not be construed as a waiver of Seller's right to act or to enforce any such term or condition and Seller's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Seller of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

17.3 In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be replaced to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

## **18. Governing law and jurisdiction**

18.1 The parties' rights and obligations arising out of or in connection with agreements orders confirmed by Seller, other agreements executed between the parties and/or these Conditions shall be governed, construed, interpreted and enforced according to the laws of the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

18.2 Any disputes will be exclusively resolved by the competent courts in Amsterdam, the Netherlands without prejudice to Seller's right to submit the relevant case to the court which would have jurisdiction if this provision has not been incorporated in the Conditions, and the parties do hereby consent to the jurisdiction of those courts and waive any objection which they may have, now or hereafter, to venue of those suits, actions or proceedings.

18.3 In the event the Customer is domiciled outside the European Economic Area, Seller may choose to have disputes settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of one arbitrator in the event of disputes with a value of less than EUR 500,000 and otherwise by three arbitrators. The arbitral tribunal shall be appointed according to the list procedure. The place of arbitration shall be Amsterdam and the proceedings shall be conducted in the English language.

18.4 Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.

## **19. Survival of rights**

The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these Conditions which are intended to continue to have effect after such termination.