

General Terms and Conditions of Sale for the Business Unit Magnesium Supply and Recycling (Status: May 2023)

I. General - Scope

1. Our deliveries and services are exclusively subject to the following General Terms and Conditions of Sale. Furthermore, our enclosed Data Protection Declaration applies. These General Terms and Conditions of Sale and the Data Protection Declaration shall also apply to all future transactions between the contracting parties, without the need to refer to our General Terms and Conditions of Sale and Data Protection Declaration again. They shall also apply if we do not expressly refer to them in subsequent contracts, in particular also if we provide deliveries or services to the buyer without reservation in the knowledge that the buyer's terms and conditions are contrary to, or deviate from, our General Terms and Conditions of Sale. Conflicting or deviating terms and conditions of business of the buyer or terms and conditions of business of the buyer that go beyond these General Terms and Conditions of Sale shall not become part of the contract unless we have expressly agreed to their validity in writing.

2. Changes and additions to our General Terms and Conditions of Sale will be communicated to the buyer in advance in writing or by email. A change or addition shall be deemed to have been approved if the buyer does not express their objection in text form within one month of the date of notification. This will be pointed out to the buyer separately in the notification of the change or addition.

3. The General Terms and Conditions of Sale shall only apply to entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law.

II. Quotations and contract conclusion; definition of service contents

1. Our offers to the buyer are non-binding. The buyer's order is considered a binding offer. Acceptance of this offer shall be made at our discretion within four weeks by sending an order confirmation or by unconditional provision of the ordered deliveries or services.

2. In the case of sales based on samples, these merely guarantee professional trial conformity, but do not constitute the assumption of a guarantee within the meaning of Section 276 (1) of the German Civil Code or a guarantee for the quality or durability of the goods to be supplied by us within the meaning of Section 443 of the German Civil Code.

3. The documents that form part of the offer, such as illustrations, drawings, weights and measurements, performance and consumption data as well as the technical data and descriptions in the respective product information or advertising materials shall be non-binding. They do not represent any agreed qualities and neither quality nor durability guarantees of the items to be delivered by us.

4. Insofar as we make statements about the properties or usability of our products, these shall only apply in each case insofar as we are able to make a conclusive assessment of the buyer's intended use and the conditions of use on the basis of the information provided by the buyer.

III. Weight detection

Insofar as the delivery quantity has been fixed, we shall be entitled to deliver up to 1% more or less. If the quantity is marked "approx." or the like, underweights or overweights of up to 5 % may not be objected to by either contracting party. Special designs are made according to the desired quantity, if possible. In this case, larger overweights or underweights required for the special production shall be permissible.

IV. Prices, terms of payment, default of payment

1. The prices agreed upon conclusion of the respective contract, in particular those stated in the order form or the order confirmation, shall apply. If a price is not expressly determined, the prices valid at the time of the conclusion of the contract, according to our price list, shall apply. In addition to these prices, the sales tax applicable on the day of delivery, at the respective statutory rate, as well as the costs for the packaging necessary for proper dispatch, as well as the transport costs ex our works or ex our warehouses, the cartage costs and - if agreed - the costs of transport insurance shall be added. In the case of international shipments, other country-specific taxes may be added.

2. Insofar as we do not contractually agree a deviating regulation with the buyer, the following shall apply with regard to a possible adjustment of the prices: We reserve the right to adjust our prices appropriately if cost changes occur after the conclusion of the contract, in particular due to collective agreements, price increases of upstream suppliers or exchange rate fluctuations. This shall apply in particular if, after the conclusion of the contract, new taxes, fees, customs duties or other government-imposed levies are payable on products purchased from us (in particular, for their production and/or their import or export). We shall only be permitted to increase the price if there has actually been an increase in the total costs, taking into account all the relevant cost elements. An overall cost increase entitling us to a price increase shall not apply if and to the extent that a cost increase that has occurred in a certain cost area is offset by cost reductions that may have occurred in other areas. If the total costs increase, the price adjustment permitted to us shall be limited in amount by the proportion by which the costs have increased in the overall assessment to be carried out in accordance with Section IV.2. sentence 5. On request, we will specify the relevant cost elements to the buyer at any time – even in the run-up to the contract conclusion – and present their price-determining weighting in detail. At the same time as the notification of the price adjustment intended by us in each case, we shall inform the buyer of the reasons for the price adjustment in accordance with Section IV.2. sentence 7.

3. The buyer shall only be entitled to rights of set-off and retention if their counterclaim has been legally established, has not been disputed or acknowledged by us or if they are in a reciprocal relationship with our claim within the meaning of § 320 German Civil Code.

4. Bills of exchange shall only be accepted by prior agreement and only on account of payment and subject to discount, provided that collection and discount charges are borne by the buyer.

5. If the buyer defaults on a payment or if, after conclusion of the contract, a significant deterioration in the buyer's financial circumstances occurs which puts payment at risk, or if such a significant deterioration in the buyer's financial circumstances is expected to occur, we shall be entitled to declare the buyer's entire residual debt due and payable and, in amendment of the agreements made, to demand advance payment or the provision of security or, after delivery has been made, immediate payment of all our claims based on the same legal relationship. This shall apply in particular if the buyer ceases to make payments, if the buyer's checks are not honored, if bills of exchange issued by the buyer are not paid, if insolvency proceedings have been opened against the buyer's assets or if an application for the opening of insolvency proceedings has been filed but the insolvency proceedings have not been opened due to lack of assets.

V. Time of delivery and performance, delay in performance

1. Agreed delivery periods shall only be approximate unless a fixed date transaction within the meaning of § 323 para. 2 no. 2 German Civil Code has been expressly agreed in writing. If agreed delivery periods are nevertheless exceeded due to circumstances for which we are responsible, the buyer may withdraw from the contract after the fruitless expiry of a reasonable period of grace set by them. The withdrawal must be made in writing.

2. We shall only be in default after the expiry of a reasonable period of grace set by the buyer. In the event of force majeure and other unforeseeable, extraordinary circumstances for which we are not responsible, e.g. operational disruptions due to fire, water and similar circumstances, breakdown of production facilities and machinery, failure to meet delivery deadlines or delivery failures on the part of our suppliers as well as operational disruptions due to a shortage of raw materials, energy or labor, strike, lockout, difficulties in procuring means of transport, traffic disruptions, official interventions, we shall be entitled - insofar as we are prevented through no fault of our own from fulfilling our performance obligations in a timely manner due to the aforementioned circumstances - to postpone the delivery or performance for the duration of the hindrance in addition to a reasonable start-up period. If delivery or performance is delayed by more than one month as a result, both we and the buyer shall be entitled to withdraw from the contract with regard to the quantity affected by the disruption in delivery, to the exclusion of any claims for damages.

3. In any case of default, our liability for damages shall be limited in accordance with the provisions of Section IX.

4. If an order is placed on call, we shall be entitled to withdraw from the contract if the call does not take place within one year, calculated from the date of dispatch of our letter of confirmation. Instead, we may demand the agreed price after expiry of the period; in this case, the buyer may demand delivery within one year; thereafter, their claim to delivery shall expire.

5. We shall be entitled to make partial deliveries and render partial services within the agreed delivery and performance times if this is reasonable for the buyer.

6. Compliance with our delivery and performance obligations presupposes the timely and proper fulfillment of the buyer's obligations; in particular, call-offs and specifications are to be made in sufficient time that proper manufacture and delivery are possible within the contractual period. We shall reserve the right to plead non-performance of the contract.

VI. Transfer of risk, transport and packaging costs

1. Unless otherwise agreed, delivery shall be made ex our works in Bottrop and shall be collected there by the buyer at their own risk and expense. In this case, the risk of accidental loss and accidental deterioration of the contractual delivery items after they have been made available for collection shall pass to the buyer upon receipt by the buyer of the notification that they have been made available. In all other respects, the risk of accidental loss and accidental deterioration of the delivery items shall pass to the buyer upon handover to the carrier. The risk of accidental loss and accidental deterioration of the delivery items shall be borne by the buyer even if carriage paid delivery has been agreed or if the recipient is covered by our transport insurance, unless delivery is made by our own vehicles or means of transport.

2. If the buyer is in default of acceptance or in default with the fulfillment of a duty to cooperate in accordance with Section V. 6, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the buyer at the point in time at which the buyer is in default of acceptance or in debtor's delay.

3. The choice of the dispatch route shall be made by us if no special written agreements have been made in this respect.

4. Packaging requested by the buyer or deemed necessary by us will be charged to the buyer.

VII. Retention of title

1. The delivered goods shall remain our property until full payment of the purchase price as shall all other present or future claims to which we are entitled against the buyer under the business relationship. The inclusion of the purchase price claim against the buyer in a current account and the recognition of a balance shall not affect the retention of title.

2. The buyer shall be obliged to treat the delivery items with care; in particular, they shall be obliged to insure them adequately at replacement value at their own expense against loss and damage and destruction, e.g. against damage by fire, water and theft. The buyer shall hereby assign their claims from the insurance contracts to us. We accept this assignment.

3. The buyer may neither pledge our reserved goods or use them as collateral. However, they shall be entitled to resell the delivered goods in the normal course of business, in accordance with the following provisions. The aforementioned entitlement shall be void insofar as the buyer has assigned or pledged the claim against their contractual partner arising from the resale of the goods - in each case effectively - in advance to a third party or has agreed a prohibition of assignment with them.

4. In order to ensure the fulfillment of all our claims set out in Section VII. 1, the buyer hereby assigns to us all claims - including future and conditional claims - arising from a resale of the goods delivered by us, including all ancillary rights, in the amount of the value of the delivered goods with priority over the remaining part of their claims. We hereby accept this assignment.

5. As long as, and insofar as, the buyer meets their payment obligations to us, they shall be authorized to collect the claims against their customers assigned to us within the framework of proper business management. However, they shall not be entitled to agree a current account relationship or a prohibition of assignment with their customers with regard to these claims or to assign or pledge them to third parties. If, contrary to sentence 2, a current account relationship exists between the buyer and the buyers of our reserved goods, the claim assigned in advance shall also relate to the acknowledged balance and, in the event of the buyer's insolvency, also to the balance existing at the time.

6. At our request, the buyer must itemize the claims assigned to us and inform their debtors of the assignment with the request to pay us up to the amount of our claims against the buyer. We shall be entitled, after giving appropriate warning to the buyer, to notify the buyer's debtors of the assignment ourselves at any time and to collect the claims. However, we shall not exercise this right as long as the buyer duly meets their payment obligations on time, an application for the opening of insolvency proceedings against the buyer's assets has not been filed and the buyer has not stopped their payments. On the other hand, if one of the aforementioned cases should occur, we can demand that the buyer informs us of the assigned claims and their debtors, supplies all information necessary to collect the debt and hands over the relevant documents.

7. In the event of seizures or other interventions by third parties, the buyer must inform us immediately in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO).

8. The processing, treatment or reshaping of the goods delivered by us under retention of title shall always be carried out by the buyer on our behalf, without this resulting in any liabilities. If the goods delivered by us under reservation of title are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in proportion to the value of the goods delivered by us (final invoice amount, including sales tax) to the other processed items at the time of processing. In all other respects, the same shall apply to the item created by the processing as to the item of sale delivered under reservation.

If the goods delivered by us under retention of title are inseparably mixed or combined with other items not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of the goods delivered by us (final invoice amount, including sales tax) to the other mixed or combined items at the time of mixing or combining. If the mixing or combining is carried out in such a way that the buyer's item is to be regarded as the main item, it shall be deemed agreed that the buyer shall transfer proportionate co-ownership to us. The buyer shall keep the resulting solely owned or co-owned item for us. The buyer shall be entitled to resell the new products created by processing, treatment or reshaping or combining or mixing in the normal course of business, as long as they meet their obligations from the business relationship with us in good time. However, the buyer shall under no circumstances be authorized to resell or otherwise exploit under an agreement with their customers a prohibition of assignment, pledge or to secure transfer of these new products. The buyer hereby assigns to us, as security their claims arising from the sale of these new products to which we have property rights to the extent of our share of ownership in the goods sold. If the buyer combines or mixes the delivered goods with a main item of a third party, they shall now cede to us their claims against the third party up to the value of our goods. We hereby accept these assignments.

9. We undertake to release the securities to which we are entitled at the request of the buyer to the extent that the realizable value of our securities exceeds our claims against the buyer to be secured by more than 10%; we are responsible for selecting the securities to be released.

VIII. Rights of the buyer in case of defects, sampling

1. The rights of the buyer in the event of defects presuppose that the buyer has duly fulfilled their statutory inspection and notice of defects obligations.

2. Within 10 days after receipt of a notice of defect, we shall be entitled to have a re-sampling of the delivered goods carried out by a sworn metal sampler, on whose person both parties shall agree and whose findings shall be accepted by both parties. If the parties are unable to agree on a specific expert within 2 weeks of being requested to do so by one of the parties, this expert shall be appointed by the Chamber of Industry and Commerce responsible at our place of business at the request of one of the parties and shall be binding on both parties. The unsuccessful party according to the findings of the expert shall bear the costs incurred by the expert; in the event of partial defeat, the costs shall be apportioned in accordance with the extent to which the parties have succeeded and failed. Subject to Sections 317 to 319 of the German Civil Code, the expert's findings shall be binding on the parties with regard to the question of the existence or non-existence of the defects and the valuation. Both parties may be present or represented at the time of sampling.

3. Sampling and arbitration analyses shall be carried out on the basis of the relevant DIN standards or equivalent standards and the procedures recognized in the industry.

4. If there is a defect in the goods delivered by us, we shall only be obliged, at our discretion, to remedy the defect or to deliver defect-free goods (subsequent performance) and, if the respective legal requirements are met, to fulfill the buyer's claims under § 439 (2) and (3) and § 475 (4) and (6) of the German Civil Code.

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If we are not willing or able to provide supplementary performance, in particular if this is delayed beyond a reasonable period for reasons for which we are responsible, or if supplementary performance fails in any other way, the buyer shall be entitled, at their discretion, to withdraw from the contract or to demand a reduction in the purchase price. A rectification of defects shall be deemed to have failed after the third attempt, unless the nature of the item or other circumstances indicate otherwise. Insofar as the buyer has suffered damage or has incurred futile expenses due to defects in goods delivered by us, our liability for this shall be governed by Section VIII, Section IX and Section X.

5. The buyer's right of recourse against us pursuant to §§ 445a, 478 German Civil Code (Recourse of the Entrepreneur) shall be limited to cases where the buyer has not entered into any agreements with their customer that go beyond the statutory claims for defects. If only entrepreneurs are involved in the supply chain including the last sales contract, the application of paras. 1 and 2 of § 445a German Civil Code shall be excluded.

6. In all other respects, the provisions of Sections IX and X shall apply to claims for damages. Further claims or claims other than those regulated in this Section VIII in conjunction with Section IX by the buyer against us and our vicarious agents on account of a material defect shall be excluded.

IX. Liability

1. Liability on the part of our company for damage or futile expenditure—irrespective of the legal basis – shall only arise if the damage or the futile expenditure

a) has been caused by us or one of our vicarious agents through culpable breach of an essential contractual obligation or

b) are due to gross negligence or intent on our part or on the part of one of our vicarious agents.

Material contractual obligation within the meaning of Section IX. 1. a) is every contractual obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely. Notwithstanding Section IX.

1. a) We shall only be liable for damages or futile expenses resulting from consultation and/or information which is not separately invoiced in the event of intentional or grossly negligent breach of duty, insofar as this breach of duty does not constitute a material defect pursuant to § 434 German Civil Code of the goods delivered by us.

2. If we are liable pursuant to Section IX. 1. a) for the violation of an essential contractual obligation, without gross negligence or intent, our liability for damages shall be limited to the foreseeable, typically occurring damage. In this case, we shall not be liable in particular for loss of profit of the buyer and unforeseeable indirect consequential damage.

3. The aforementioned provisions set forth in Section IX. 1. and 2. shall not apply insofar as our liability is mandatory due to the provisions of the Product Liability Act. The provisions set out in Section IX. 1. and 2. shall furthermore not apply if claims are asserted against us on the basis of injury to life, limb or health. If the goods delivered by us lack a guaranteed quality, we shall only be liable for those damages whose absence was the subject of the guarantee.

4. Any further liability for damages other than that stipulated in Sections IX. 1.-3. shall be excluded – regardless of the legal nature of the asserted claim. This also applies in particular to claims for damages arising from culpa in contrahendo pursuant to §§ 311 para. 2, 280 German Civil Code, positive breach of contract pursuant to § 280 German Civil Code or claims arising from tort.

5. Insofar as liability for damages towards us is excluded or limited in accordance with Section IX. 1.-4., this shall also apply with regard to the personal liability for damages of our salaried employees, workers, representatives and vicarious agents.

6. In the event of a resale of the products supplied by us, the Buyer undertakes to fully comply with the respective applicable legal export provisions and to require its affiliated companies to comply with such provisions. The Buyer hereby confirms that it will not sell, ship, export or divert, directly or indirectly through third parties or otherwise, the products supplied by us unless this is lawful under the applicable export regulations. In particular, Buyer will not sell or supply the Products delivered by us to any person or entity included on any sanctions list published under or in connection with the applicable export regulations. Buyer shall indemnify and hold us harmless from any and all claims, fines and penalties asserted against us as a result of Buyer's violation of the applicable export regulations.

X. Limitation of claims

1. Claims of the buyer due to defects in goods delivered by us or due to services rendered by us in breach of duty – including claims for damages and claims for compensation of futile expenses – shall become statute-barred within one year from the statutory commencement of the limitation period, unless otherwise provided for in the following Sections X.2. to X.4.

2. If the buyer or another buyer in the supply chain has satisfied claims of their buyer due to defects in newly manufactured goods delivered by us and if the last transaction in the supply chain is a purchase of consumer goods, the limitation period for claims of the buyer against us under Sections 437, 445a (1) of the German Civil Code shall commence at the earliest two months after the time at which the buyer (our customer) or the other buyer in the supply chain has satisfied the claims of the consumer as an entrepreneur, unless the buyer could have successfully invoked the defense of limitation against their customer/contractual partner. The statute of limitations for the buyer's claims against us for defective items delivered by us shall in any case come into effect insofar as the claims of the buyer's customer/contractual partner against the buyer for defects in the items delivered by us to the buyer have become statute-barred, but no later than 5 years after the time at which we delivered the respective goods to our buyer.

3. If we have provided consultation and/or information which is not to be remunerated separately in breach of duty without having supplied goods in connection with the information or consultation and without the consultation or information in breach of duty constituting a material defect in accordance with § 434 German Civil Code of the goods supplied by us, any claims against us based thereon shall become statute-barred within one year from the statutory commencement of the limitation period. Claims of the purchaser against us arising from the breach of contractual, pre-contractual or statutory obligations which do not constitute a material defect pursuant to § 434 German Civil Code of the goods to be delivered or delivered by us shall also become statute-barred within one year from the statutory commencement of the limitation period. Insofar as the aforementioned breaches of duty constitute a material defect pursuant to § 434 of the German Civil Code of the goods delivered by us in connection with the consultation or information, the provisions set out in Sections X.1., X.2. to X.4. shall apply to the limitation of claims based thereon.

4. The provisions set out in Section X. 1 to 3 shall not apply to the limitation of claims based on injury to life, limb or health, nor to the limitation of claims based on the Product Liability Act and due to defects in title of the goods delivered by us which consist in a right in rem of a third party on the basis of which the surrender of the goods delivered by us can be demanded. Furthermore, they shall not apply to the limitation of claims of the buyer which are based on the fact that we fraudulently concealed defects in goods delivered by us or that we intentionally or recklessly violated an obligation. In the cases mentioned in this Section X.4, the statutory limitation periods shall apply to the limitation of these claims.

XI. Final provisions

1. The place of performance and exclusive place of jurisdiction for all claims between us and merchants or legal entities under public law or special funds under public law shall be Bottrop, insofar as this does not conflict with mandatory statutory provisions. However, we have the right to bring an action against a buyer also at the buyer's legal place of jurisdiction.

2. The legal relationship between us and the buyer or between us and third parties shall be governed exclusively by the law of the Federal Republic of Germany as it applies to German merchants. The application of the regulations on the international sale of goods (CISG - Vienna UN Convention on Contracts for the International Sale of Goods) shall be expressly excluded.

3. Should any of the above provisions be invalid or excluded by a special agreement, this shall not affect the validity of the remaining provisions.