

General Terms of Sale for the Delivery and Recycling of Magnesium

I. General, Scope

Our deliveries and services are provided exclusively on the basis of the following General Terms of Sale. These General Terms of Sale shall also apply to all future transactions between the contracting parties without requiring any further reference to our General Terms of Sale. They shall also apply even if we do not explicitly refer to them in future agreements, in particular if we, in awareness of the buyer's Terms of Conditions contrary to or deviating from our Terms of Sale, provide deliveries or services without any reservation.

II. Offers and Conclusion of Contract; Specification of Services

1. Our offers made to the buyer are non-binding. The placing of an order by the buyer shall be binding. The acceptance of the order takes place, at our option, within four weeks by sending an order confirmation or the unreserved provision of the ordered deliveries or services.
2. In the case of sales by sample, they shall merely ensure the professional quality standards applicable to samples, but shall not be an acceptance of a guarantee in terms of § 276 Para. 1 BGB (German Civil Code) or a guarantee in terms of § 443 BGB (German Civil Code) for the quality or durability of the goods to be delivered by us.
3. The documents that are part of the offer such as illustrations, drawings, weight and dimensional specifications, performance data and consumption data as well as the technical data and descriptions found in the respective product information or advertising material shall be non-binding. They shall not constitute agreed qualities and neither do they constitute guarantees for the quality or durability of the items to be delivered by us.
4. When we make statements on the characteristics or the applicability of our products, they shall apply only in so far as we are able to make a final assessment of the buyer's intended use and of other operating conditions on the basis of information provided by the buyer.

III. Weight Determination

If the delivery quantity has been agreed upon, we shall have the right to deliver up to 1 % more or less. If the quantity has been designated as "approx." or suchlike, none of the contracting parties can object to short weights or surplus weights of up to 5%. Custom-made products shall be delivered, if possible, in the desired quantity. Surplus weights or short weights caused by the custom manufacture are acceptable.

IV. Prices, Terms of Payment, Default of Payment

1. The prices agreed upon during the conclusion of the respective contract shall apply, in particular the prices stated on the order form or order confirmation. If a price has not been explicitly determined, the prices according to our price list valid at the time of the conclusion of the agreement shall apply. These prices do not include the value-added tax applicable at the time of the delivery in the respective legal amount as well as the costs for packaging required for proper shipment as well as the transport costs from our plant or warehouses, the freight charges and – if agreed upon – the costs for transport insurance. There may be other country-specific dues in case the goods are delivered to foreign countries.
2. Unless we have reached a different agreement with the buyer, the following shall apply regarding a possible price adjustment: we reserve the right to a reasonable adjustment of our prices if changes in costs arise after the conclusion of the contract, in particular due to wage settlements, price increases by suppliers or currency fluctuations. This is particularly relevant, if – after the conclusion of the contract – new taxes, fees, duties or other state-decreed dues are to be paid on products bought by us (namely for their production and/or their import or export). We shall only be entitled to a price increase if the total costs have actually increased as determined by due consideration of all important cost components. An increase of the total costs does not justify a price increase if and in so far as a cost increase occurring in a certain cost area is compensated by cost reductions that have occurred in other areas. If the total costs have increased, the amount of the price adjustment we are entitled to shall be limited by the proportion with which the costs have increased after an overall consideration in accordance with Section IV.2 Sentence 5. If requested by the buyer, we will at any time – even prior to the conclusion of the agreement – designate the relevant cost components and conclusively present their price forming weighting in detail. At the same time that we inform the buyer about the intended price adjustment, we shall conclusively present him the reasons for the price adjustment in accordance with Section IV.2. Sentence 7.
3. The buyer is entitled to offsetting and retention rights only if his counterclaim has been established as final and absolute and if we do not contest it or if we accept it. The retention right applies only, if the asserted counterclaim is based on the same contractual relationship as our claim.
4. Bills of exchange shall only be accepted after prior agreement and only on account of payment and subject to the discounting option whereas collection charges and discount charges shall be at the expense of the buyer.
5. If the buyer does not pay invoices due, exceeds the time for payment allowed, if the financial circumstances of the buyer deteriorate after the conclusion of the contract or if we receive unfavourable information about the buyer which will call into question the solvency or financial standing of the buyer, we shall be entitled to call in the entire remainder of the debt and to demand, by amending the agreements reached, advance payments or collateral securities or an immediate settlement of all our claims based on the same legal relationship. This shall apply in particular, if the buyer suspends his payments, if cheques provided by the buyer are not honoured, bills of change provided by the buyer are not paid or if insolvency proceedings have been opened against the assets of the buyer or if insolvency proceedings have not been initiated due to insufficient assets.

V. Time of Delivery and Performance, Default

1. Agreed delivery dates shall be only approximate unless a fixed date has expressly been agreed upon in writing in accordance with the terms of § 323 Para. 2 No. 2 BGB (German Civil Code). If delivery dates will nevertheless be exceeded for reasons not beyond our control, the buyer shall have the option to withdraw from the agreement after fruitless expiration of a reasonable additional respite. The withdrawal has to be made in writing.
2. We shall be in default only after the expiration of a reasonable additional respite granted by the buyer. In case of Force Majeure and other unforeseeable, exceptional circumstances beyond our control such as breakdowns due to fire, water and similar circumstances, failure of production facilities and machinery, exceeding the term of delivery or failure to deliver on the part of our suppliers as well as breakdowns due to a shortage of raw materials, energy or manpower, strikes, lock-outs, problems with the provision of means of transport, traffic problems, official interventions, we shall - as far as we are prevented from fulfilling our obligations through no fault of our own – be entitled to postpone the delivery or the performance for the duration of the impediment plus a reasonable lead time. If the delivery or performance is hereby delayed by more than one month, both we and the buyer shall be entitled – to the exclusion of all claims for damages – to withdraw from the agreement with respect to the quantity affected by the disruption in delivery.
3. In each case of default, our liability for damages is limited in accordance with the provisions in Section VII.
4. In case an order is made on call, we shall be entitled to withdraw if the call does not take place within one year after the sending of our confirmation letter. Instead, we can ask for the agreed price after the period has expired; in this case the buyer may demand the delivery within one year; his entitlement to the delivery will cease thereafter.
5. We shall be entitled to partial deliveries or to partial performance within the agreed delivery and performance times, if this can be reasonably expected of the buyer.

6. The compliance with our obligation to supply and perform presupposes the timely and proper fulfillment of the buyer's obligations. Order calls and specifications, in particular, have to be made early enough to allow for proper production and delivery within the term of the contract. We reserve the right to enter a plea for non-performance of the contract.

VI. Transfer of Risks, Transport and Packaging Costs

1. Unless otherwise agreed upon, the deliveries will be dispatched from our plant in Bottrop with the buyer collecting the consignment there at his own risk and expense. In this case, the risk of accidental loss and accidental deterioration of the contractual delivery items shall pass to the buyer at the time the items are ready for collection and after the buyer has received the ready-for-collection note. Otherwise, the risk of accidental loss and accidental deterioration of the delivery items shall pass to the buyer when they are handed over to the carrier. The risk of an accidental loss and an accidental deterioration of the delivery items shall also pass to the buyer if carriage-free deliveries have been agreed upon and if we carry a transport insurance for the consignee, except if the delivery takes place by our own vehicles or means of transportation.
2. In the event of default in acceptance or default of an obligation to co-operate according to Section IV. 6, the risk of an accidental loss or an accidental deterioration of the sales item shall pass to the buyer at the time of a default of acceptance or a default of the debtor.
3. We shall choose the dispatch route, if no other special agreements have been made in writing.
4. The packaging requested by the buyer or deemed necessary by us shall be at the buyer's expense.

VII. Reservation of Title

1. We shall retain title to the delivered items until the entire purchase price and all other current or future claims resulting from business relations with the customer have been paid. The inclusion of the outstanding purchase price in a current account and the recognition of a balance shall not affect the reservation of title.
2. The buyer shall be obliged to treat the delivered items carefully, in particular he shall be obliged to insure them sufficiently at purchase price against loss and damage and destruction, e.g. against damage caused by fire, water and theft. The buyer herewith agrees to assign his claims resulting from the insurance policies to us. We accept this assignment.
3. The buyer may neither pledge nor transfer by way of security the items owned by us. However, he shall be entitled to resell the delivered items in the normal course of business in accordance with the following provisions. The aforementioned entitlement shall not hold in as far the buyer has assigned or pledged claims resulting from the resale of the goods against his contracting party – in advance and effectively in each case – to a third party or if he has agreed a prohibition of assignment with such party.
4. As a security for the fulfillment of all our claims under VII. 1 hereof, the buyer herewith agrees to assign to us all – including future and conditional claims – resulting from a resale of the delivered items including all ancillary rights in the amount of the delivered items with precedence over the remaining part of his claims. We hereby accept this assignment.
5. For as long as and as far as the buyer fulfills his payment obligations, he shall be entitled to collect the claims against his customers, which are assigned to us, within the context of proper business conduct. However, he shall not be entitled to make an agreement with his customers for a current account relationship or prohibition of assignment 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 purchasers of our goods, which are subject to a reservation of title, the claim assigned in advance shall also relate to the accepted balance and in case of insolvency of the buyer also to the then existing balance.
6. Upon our request, the buyer shall be required to verify each individual claim assigned to us and to notify his debtors of the effected assignment with the request to make a payment up to the value of our claims against the buyer. After a corresponding warning to the buyer, we shall be entitled to notify the debtors of the buyer of this assignment at any time and to collect the claims. However, we will make use of this capacity only if the buyer fails to properly meet his financial obligations or is in default, or if insolvency proceedings have been initiated against the assets of the buyer and if the buyer has stopped his payments. If one of the aforementioned cases should arise, we are entitled to request the buyer to disclose the assigned claims and its debtors, and to provide all relevant information pertaining to the collection of the claims as well as the corresponding documents.
7. In case of seizure or any other interventions of third parties, the buyer shall immediately inform us in writing in order to enable us to take action in accordance with § 771 ZPO (Civil Process Order).
7. The processing and treatment or alteration of the goods delivered subject to a reservation of title by the buyer is always done for us but without any commitments on our part. If the delivered goods subject to reservation of title are processed with items not owned by us, we shall acquire the co-ownership for the new item in proportion of the value of the goods delivered by us (final amount of the invoice including value-added tax) to the other processed items at the time of the processing. For the item resulting from the processing, the same shall apply as to the sales item delivered subject to reservation. If the goods delivered by us subject to a reservation of title are inextricably mixed or combined with items not owned by us, we shall acquire the co-ownership for the new item in proportion of the value of the goods delivered by us (final amount of the invoice including value-added tax) to the other mixed or combined items at the time of the mixing or combination. If the mixing or combination takes place in such a manner that the item of the buyer is to be regarded as the main item, it shall be agreed that the buyer will transfer the co-ownership to us proportionally. The buyer shall hold the sole ownership or the co-ownership thus created in safe custody for us. Within the scope of normal business operations, the buyer is entitled to dispose of the new products resulting from the processing or treatment or alteration or combination or mixing as long as he meets his obligations resulting from the business relation with us in due time. Under no circumstances is the buyer authorized, however, to resell or to utilize these new products in any other way, under an agreement of a prohibition of assignment with his customers, or to pledge or transfer them by way of security. The buyer herewith agrees to transfer his claims resulting from the sale of these new products for which we are entitled to property rights to the extent of our share of ownership in the sold goods as a security. If the buyer combines or mixes the delivered items with a main item of a third party, he herewith agrees to assign his claims against the third party to us up to the value of our products. We hereby accept these assignments.
8. On request of the buyer, we shall be obliged to release the securities that we are entitled to, if the realisable value of our securities exceeds the claims against the buyer to be secured by more than 10 %. The choice of the securities to be released lies in our discretion.

VIII. Rights of Buyer in Case of Defects, Sampling

1. The rights of the buyer in case of defects imply that he has complied with his legal inspection and notification duties in due form.
2. Within a period of 10 days after the receipt of a notice of defect, we shall be entitled to have the delivered goods resampled by a sworn metal sampler. Both parties have to agree on this person and shall accept his conclusion. If the parties can not agree on a certain expert within two weeks after the request by one of the parties, the expert shall be appointed upon request of one party by the chamber of commerce and industry responsible for our place of business. This appointment shall be binding for both parties. The party losing the case according to the conclusions of the expert shall bear the costs of the expert, in case of a partial victory, the parties bear the costs in proportion of their prevailing/losing. The conclusions of the expert, subject to §§ 317 to 319 BGB (German Civil Code), are binding upon the parties in terms of the existence or non-existence of the defects and the assessment. Both parties may be present during the sampling or may designate a representative.
3. Samplings and arbitrary analyses are to be carried out on the basis of the applicable DIN standards or equivalent standards as well as on the basis of the methods accepted in the industry.

4. In the case of a defect in items delivered by us, we shall only be obliged to optionally eliminate the defect or to deliver goods free from defects (retroactive performance). If we are not prepared or not able to grant retroactive performance, especially if this retroactive performance exceeds reasonable periods of time for reasons for which we are responsible or if the retroactive performance fails for other reasons, the buyer shall be entitled to optionally withdraw from the contract or to demand a reduction of the purchase price. A rectification of defects shall be deemed to have failed after the third attempt, if nothing to the contrary arises from the nature of the item or from other circumstances. If the buyer has suffered damage resulting from defects of the items delivered by us or if he has incurred wasted expenditures, our liability in this instance is defined in Section VIII., Section IX. and Section X. Additional claims or claims other than those defined in this Section VIII in combination with Section IX. against us and our servants and assistants because of defects shall be excluded.
5. Recourse claims of the buyer against us in accordance with § 478 BGB (German Civil Code) (entrepreneur's recourse) are valid only if the buyer has not made agreements with his customer exceeding the legal claims for defects.

IX. Liability

1. A liability of our company for damage or wasted expenditures – regardless of the legal grounds - shall occur only, if the damage or the wasted expenditures
 - a) has been caused by us or by one of our assistants through culpable violation of a fundamental contractual obligation or
 - b) is the result of gross negligence or intention on our part or on the part of one of our assistants.
 A fundamental contractual obligation in terms of Section VII 1. a) is any contractual obligation whose fulfilment will make the proper performance of the contract possible in the first place and whose fulfilment the contracting party is usually entitled to rely on. Notwithstanding Section IX./1. a), we shall be liable for damage or wasted expenditures resulting from counsel and/or advice not to be compensated for separately only in case of intentional or grossly negligent violation of an obligation, unless this violation of an obligation constitutes a defect of quality of the goods delivered by us in accordance with § 434 BGB (German Civil Code).
2. If we are liable for the violation of a fundamental contractual obligation according to Section IX. 1. a) without evidence of gross negligence or intent, our liability for damages shall be limited to the foreseeable and typically occurring damage. In this case we shall especially not be liable for loss of profit for the buyer and also not for unforeseeable indirect damages.
3. The limitations of liability defined in Section IX. 1. and 2. do not apply as far as our liability is mandatory due to the provisions of the Product Liability Law. The liability limitations named in Section IX. 1. shall not apply either, if claims are asserted against us due to loss of life, injury to body or health. If the item delivered by us lacks a guaranteed quality, we shall only be liable for such damage which is covered by the warranty. An extended liability for damages other than that defined in Section IX. 1 to 3. is excluded – irrespective of the legal form of the asserted claim. In particular, this applies also to claims for damages resulting from fault upon completion of the contract according to §§ 311, Para. 2, 280 BGB (German Civil Code), positive violation of contractual duty according to § 280 BGB (German Civil Code) or due to claims based on tort according to § 823 BGB (German Civil Code). As far as our liability for damages is excluded or limited in accordance with Section IX. 1. to 3., this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and assistants.

X Limitation of Claims

1. Claims raised by the buyer due to defects in items delivered by us or to services rendered by us in breach of duty – including claims for damages and claims for the refund of wasted expenditures – shall be limited to a period of one year from the beginning of the statutory limitation period, in as far as the following Sections X.2 to X.4. do not contain anything to the contrary.
2. In case the buyer is an entrepreneur and if he or another buyer as an entrepreneur in the supply chain has satisfied the claims of the consumer that resulted from defects to newly manufactured items delivered by us and which were delivered as newly manufactured items to a consumer, the buyer's limitation of claims against us according to §§ 437, 478 Para. 2. BGB (German Civil Code) shall take effect no earlier than two months after the date on 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 pleaded the statute of limitations towards his customer/contracting party. The buyer's limitation of claims against us due to defective items delivered by us will apply in any case, if the claims of the buyer's customer/contracting party towards the buyer due to defects on the items delivered by us has become time-barred, but no later than five years after the date on which we delivered the respective goods to our buyer.
3. In case we have provided counsel and/or advice in breach of duty, which is not to be paid for separately, without having delivered products in conjunction with the counsel or advice and without the counsel or advice constituting a defect of quality in accordance with § 434 BGB (German Civil Code), the claims based thereon shall be limited to one year from the statutory beginning of the limitation period. Claims raised by the buyer against us resulting from the violation of contractual, pre-contractual or statutory obligations which do not constitute a defect of quality pertaining to the delivered items or items to be delivered in accordance with § 434 BGB (German Civil Code), shall also be subject to a limitation period of one year from the beginning of the statutory limitation period. In as far as the aforementioned breaches of duty constitute a defect of quality, according to § 434 BGB (German Civil Code), of the items delivered by us in conjunction with counsel or advice, the provisions of Section X.1., X.2. to IX. X.4 shall apply to the limitation of claims.
4. The provisions covered in Section IX. 1. to 3. shall not apply to the limitation of claims resulting from loss of life, injuries to body and health as well as the limitation of claims in accordance with the Product Liability Act and due to legal deficiencies of the items delivered by us which consist of a material right of a third party, on the basis of which the release of the items delivered by us can be demanded. Furthermore, they shall not apply to the limitation of claims submitted by the buyer made on the basis that we have maliciously concealed defects on items delivered by us or that we have intentionally or with gross negligence violated an obligation. For the cases mentioned in this Section X.4, the statutory limitation periods shall apply to the limitation of claims.

XI. Place of Performance, Place of Jurisdiction, Applicable Law

1. Place of performance and sole place of jurisdiction for all claims between us and merchants or legal entities of public law or separate assets under public law is Bottrop, as far as there are no conflicts with mandatory statutory provisions. However, we shall have the right to initiate legal proceedings against a buyer at the place of jurisdiction of the buyer.
2. The legal relations between us and the buyer or between us and third parties shall be governed exclusively by the legislation of the Federal Republic of Germany as it applies to relations between German merchants. The application of provisions pertaining to the Unified International Purchase Laws (CISG – Vienna UN Purchase Law) is explicitly excluded.

XII. Final Provisions

1. The invalidity of one of the preceding provisions or the exclusion thereof by a special agreement shall not affect the validity of the remaining provisions.
2. We store the data of our buyers within the scope of our mutual business relations in accordance with the Federal Data Protection Act.

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