

## GENERAL CONDITIONS OF SALE

Version: 1<sup>st</sup> January 2018 – lodged with the Chamber of Commerce under Numbers 18130572

of the private company with limited liability Plomp Mineral Services B.V., having its registered office in Sleenwijk, the Netherlands, and registered in the business register maintained by the Chamber of Commerce under Number 18130572.

### **Article 1: Definitions and applicability**

- The following terms shall bear the meanings assigned to them below for the purposes of these General Conditions of Sale:  
Agreement: any agreement which is concluded between the Seller and the Buyer, any change or addition to this, as well as all juristic acts in preparation for and in execution of such agreement;  
Buyer: a natural person or legal entity with whom or which the Seller negotiates with regard to the conclusion of an Agreement and/or that enters into an Agreement with the Seller in relation to any Products;  
Seller: the private company with limited liability, Plomp Mineral Services B.V., having its registered office in Sleenwijk, the Netherlands, and registered in the business register maintained by the Chamber of Commerce under Number 18130572, any of their subsidiaries or any other user of these Conditions;  
Conditions: these general conditions of sale of the Seller;  
Force Majeure: any circumstances beyond the reasonable control of the Seller, even if they could be foreseen at the moment when the relevant Agreement was concluded, including but not confined to (i) force majeure circumstances within the meaning of Section 6:75 of the Dutch Civil Code, (ii) government action or a request from any governmental, regulatory or administrative authority, (iii) the inability to obtain, or the shortage or lack of, fuel, water, power, gas, equipment, import or export licences, transportation or materials, or an accident involving, or the breakdown of, machinery or equipment (in this respect "inability" is also deemed to refer to a situation in which the Seller has to incur extensive costs to supply the relevant Products), (iv) default on the part of a supplier to the Seller, and (v) strikes or labour disputes;  
Products: all goods, services, licences and/or advice in the broadest sense of the terms;  
Order: any instruction issued by the Buyer to the Seller with respect to the sale and purchase of Products;  
Written/In Writing: written, in writing and/or in electronic format. Amongst other things, "electronic correspondence" refers to correspondence by email or WhatsApp.
- These Conditions are applicable to all Orders, all order confirmations of the Seller, all Agreements to be concluded by the Seller and all Agreements concluded by the Seller.
- The Seller explicitly rejects the applicability of a Buyer's general terms and conditions, howsoever they may be called.
- Parties agree that if any provision of the Conditions is held to be invalid or unenforceable, then such provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in the Conditions but without invalidating any of the remaining provisions of the Conditions and shall be replaced by the parties by a valid and enforceable provision, which provision shall come closest to the intention(s) of the original provision.
- In the event of conflict between the Agreement and the Conditions, the Agreement shall prevail.
- These Conditions have been drawn up in Dutch and have been translated into various languages. In the unlikely event that there is a conflict between any such translation and the Dutch version, the latter shall prevail.

### **Article 2: Conclusion of an Agreement**

- No offer, quotation, estimate or other statement made by the Seller shall bind the latter, even if it includes a deadline for acceptance, and it shall only serve as an invitation to place an Order.
- An Agreement shall only be concluded provided that and insofar as the Seller confirms an Order In Writing by means of a notice of confirmation, which notice shall serve as a correct and comprehensive record of the relevant Agreement in such a situation. In the absence of a Written Agreement or notice confirming an Order, the parties shall nevertheless be bound in the event that the Seller begins to execute the relevant Agreement. In that case the invoice and/or delivery note shall be considered to constitute a correct, comprehensive record of the relevant Agreement.
- Any addendum to or amendment of an Agreement shall only apply provided that and insofar as it is explicitly recorded In Writing by a representative of the Seller who is authorised to do so.
- The Seller shall be entitled to amend these Conditions, which amended Conditions shall apply as of the date stipulated and after they have been issued.
- The Seller only undertakes to supply those Products which comply with the product features stipulated in the relevant Agreement, which is at any rate deemed to include the technical specifications.

### **Article 3: Delivery**

- Delivery shall occur ex works – in accordance with the latest edition of the Incoterms – from the address of the Seller's registered office or some other place designated by the Seller. Even if free delivery is agreed upon, delivery is assumed to have taken place ex works, and the Buyer shall assume risk for damage caused to the Products during transportation and shall properly insure itself against such risks at its own expense. Documents shall be taken up by Buyer, ship and/or cargo lost or not lost.
- A delivery time stipulated by the Seller shall be based on the circumstances prevailing in relation to the Seller when the relevant Agreement is concluded and shall be recorded by way of indication. The delivery time shall be observed by the Seller as much as possible, but shall not be a strict deadline. If the delivery period is exceeded, the Buyer shall not be entitled to any compensation in this regard nor shall the Buyer be entitled to dissolve and terminate the Agreement in that case.
- The Seller is at its option entitled to make partial deliveries and separately invoice such partial deliveries.
- In the event that the Seller requires information and/or equipment for the purposes of executing an Agreement which the Buyer is required to supply, under no circumstances shall a term of delivery commence until all requisite information and/or equipment is in the Seller's possession, the Buyer has complied with their aforementioned obligation towards the Seller or the term of delivery is extended in accordance with the foregoing.
- If the Buyer does not or does not take timely possession of the Products, it shall be in default without a notice of default being required. In that event, the Seller shall be entitled to store the Products at the Buyer's expense and risk. The Buyer shall continue to owe the amounts owed under the Agreement, plus the Dutch statutory commercial interest referred to in Section 6:119a of the Dutch Civil Code and costs (as compensation).

### **Article 4: Complaints**

- Upon delivery of the Products the Buyer shall immediately inspect the Products and satisfy itself as to their condition, quantity and quality. Complaints related to any direct observable defects shall be made immediately In Writing but by no later than within one (1) week after the date of delivery. Complaints related to invoices must be submitted In Writing within one (1) week after the relevant invoice date.
- In case of a hidden defect, the Buyer shall notify the Seller immediately and in writing but at the latest within one (1) week after the discovery of the defect. In all cases a hidden defect must be reported by no later than one (1) month after delivery.
- Upon the expiry of the terms mentioned in clause 4.1 and 4.2, the Buyer shall be deemed to have approved the Products which have been delivered or the relevant invoice. After the expiry of such a term, a complaint shall no longer be accepted and the Buyer shall be deemed to have exhausted any entitlement to file a claim.
- Notwithstanding the provisions of Clause 3 of this article, the Seller shall not consider a complaint in relation to any technical product specifications that are not recorded in the relevant Order or Agreement.
- Provided that a claim has been filed on time, appropriately and in accordance with the provisions of this clause, and the Seller has been notified that it is in default and has been afforded a reasonable period of time within which to remedy this, the Seller shall again deliver any Products found to be defective free of charge provided that the defect in respect of which the complaint has been made has resulted in material default on the part of the Seller. In this case the Buyer shall be required to return the Products found to be defective. Upon providing the aforementioned service, the Seller shall have discharged its obligations in this respect completely.
- The usual tolerances for quantities, weights and measurements customary in the branch shall apply. The quantity and weight of any delivery of Products as recorded by the Seller on despatch from the place of loading shall be conclusive evidence of the weight received by the Buyer.
- The information relating to the Products (in respect of the quality, composition, treatment in the widest sense, application possibilities, properties etc.) is understood to be indicative only. No warranty, express or implied, is made to its accuracy or completeness and the Products are not made to the suitability for any intended purpose. The Seller shall not be liable for damages resulting from the use of the Products.

### **Article 5: Prices & terms of Payment**

- Prices shall be stated in euros and shall be set out in the notice confirming the relevant order exclusive of value added tax (in so far as applicable) or any other national or international government levy.
- Other than the yearly price indexation, the Seller is entitled to pass on to the Buyer price rises which are the direct or indirect result of any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, change in duties, significant increase in the cost of labour, the prices of the Seller's suppliers, freight, material or other cost of manufacture). The Seller shall notify the Buyer of a price increase In Writing as soon as possible.
- The Buyer shall pay each invoice within thirty (30) days from the date of invoice. All terms of payment shall be material. The Buyer shall not be entitled to deduct any sum from an invoiced amount or to set off any counterclaim that it has against the Seller against such invoiced amount.
- The Buyer shall not be entitled to suspend any payment obligation vis-à-vis the Seller.
- The Seller shall at all times – also while the relevant Agreement is being executed – be entitled to require the Buyer to effect payment in advance or to tender any form of security, including but not confined to a pledge or bank guarantee. Should the Buyer fail to provide such security when first requested to do so, it shall be in default without any notice of default being required.
- If the Buyer does not pay any amount owed by it within the stated period, the Buyer shall be in default without a notice of default being required. In addition, as from the due date, the Buyer shall owe the Dutch statutory commercial interest referred to in Section 6:119a of the Dutch Civil Code. Both the legal and other costs incurred by the Seller to compel specific performance of the Buyer's obligations shall be paid by the Buyer.

### **Article 6: Retention of title**

- Notwithstanding actual delivery, title to the Products shall not be transferred to the Buyer until it has completely fulfilled everything which it owes the Seller pursuant to any Agreement.
- In the event that and for as long as the Seller owns the Products, the Buyer shall not be entitled to sell or otherwise transfer ownership of them, rent them out, allow them to be used, or to pledge or otherwise encumber them outside its normal business operations. The Buyer shall store the Products separately from other products preserving all identifying marks.
- The Seller is entitled to unimpeded access to the Products it owns. The Buyer shall fully cooperate with the Seller to afford the Seller an opportunity to exercise the retention of title referred to in Clause 1 by repossessing the Products, including any disassembly that may be required.
- In the event that and for as long as the Seller owns the Products, the Buyer shall immediately give notice if they are (or are in danger of being) attached or those Products (or any part of them) are otherwise claimed. Furthermore, the Buyer shall be required to draw the relevant third party's attention to the Seller's rights (proprietary or otherwise).
- Notwithstanding the provisions of Clause 1 of this article, the implications of such retention of title to Products destined to be exported under property law shall be governed by the law of the receiving country but only provided that the aforementioned retention of title does not cease to apply under that law until the Buyer has paid all that it owes the Seller pursuant to any Agreement. This shall apply subject to the provisions of Section 10:128(2) of the Civil Code.

### **Article 7: Force Majeure**

- Should the Seller be prevented from complying with its obligations under an Agreement due to Force Majeure, the period within which the Seller is required to fulfil its obligations shall be extended. In this case the Seller shall be relieved of all liability for any delay or non-compliance due to the situation of Force Majeure. The Seller shall inform the Buyer of a Force Majeure situation as soon as possible.
- Where a situation of Force Majeure persists for longer than two (2) consecutive months or where it is established that it will persist for more than two (2) months, either party shall be entitled to cancel the relevant Agreement by means of a Written notice to this effect. Nevertheless, the Seller shall be entitled to invoice the Buyer for that part of the Agreement that has already been executed.

### **Article 8: REACh Regulation & CLP Regulation & GHS Regulation**

- The Seller is compliant or is in the process to comply with the latest REACh Regulation, CLP Regulation and GHS Regulation.
- The Seller shall not be liable in the event that its supplier and/or the Products are found to be non-compliant with the latest REACh Regulation, CLP Regulation and GHS Regulation, provided that the Seller did not know of such non-compliance.

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3. Failure of the Buyer to comply with the latest REACh regulations, CLP Regulation and GHS Regulation (which compliance the Seller is not obliged to check), shall exempt the Seller from any and all liability. The Buyer shall indemnify the Seller against all claims, actions, costs, losses, damages or expenses or other matters arising out of or in connection with such non-compliance.

### **Article 9: Liability and indemnification**

1. The Seller shall not be liable for any loss suffered by a Buyer or any other party except insofar as such loss is the direct result of a deliberate act or omission, or wilful recklessness on the part of the Seller.
2. In any event the Seller shall only be liable for a direct loss. Under no circumstances shall the Seller be liable for any indirect loss, such as consequential loss, loss due to a delay, loss of profit or turnover, or loss due to work-related sickness.
3. Subject to the provisions of the foregoing clauses, the Seller's liability towards the Buyer and/or any other party shall in all cases be confined to the sum that is disbursed pursuant to the Seller's liability insurance. Insofar as the insurer does not proceed with such disbursement for any reason whatsoever, the Seller's liability towards the Buyer or any other party shall in all cases be confined to the net principal sum for which the Seller has invoiced the Buyer in respect of the relevant delivery or to which the parties have agreed with each other.
4. In all cases in which the Seller has a right to invoke these provisions each of its employees that may be held liable may likewise invoke these provisions.
5. Except to the extent of the liability of the Seller as expressly set out herein, the Buyer shall indemnify the Seller against all claims, actions, costs, losses, damages or expenses or other matters arising out of or in connection with the Products.

### **Article 10: Suspension and dissolution/termination**

1. In the event that the Buyer fails to comply with any obligation towards the Seller, or should the Seller be reasonably entitled to anticipate that the Buyer will fail to comply with any obligation towards the Seller, the latter shall be entitled to suspend compliance (or further compliance) with its obligations under the relevant Agreement by means of a Written notice to this effect without the Seller having a duty to provide any other form of compensation and without prejudice to its other rights.
2. Subject to the provisions of Article 10.1, in such a case the Seller shall be entitled to cancel all or part of the relevant Agreement with immediate effect by means of a Written notice to this effect in the absence of any notice of default or judicial intervention and without the Seller having a duty to pay any compensation or to honour any guarantee subject to the Seller's other rights.
3. If the Buyer:
  - is declared insolvent/bankrupt, becomes subject to the Debt Rescheduling (Natural Persons) Act, itself requests that it be declared insolvent/bankrupt or be granted a suspension of payments or that it become subject to the Debt Rescheduling (Natural Persons) Act, or assigns its estate/assets, or an attachment is made against all or part of its assets;
  - is placed under guardianship or otherwise loses the power to dispose of all or part of its assets;
  - discontinues or transfers its business or a portion thereof, including transferring its business to a company to be incorporated or already existing, or changes the objects of its business;
  - dies;
  - does not, does not timely and/or does not properly fulfil any obligation it has under the law, the Agreement or Conditions;the Seller shall be entitled to dissolve and terminate the Agreement with the Buyer in whole or in part through written notice with immediate effect, without any notice of default or court intervention being required and without prejudice to the Seller's other rights.

### **Article 11: Disputes and governing law**

1. An Order, these Conditions, an Agreement and the legal relationship ensuing between the Seller and a Buyer pursuant to same shall be governed solely by the United Nations Convention on Contracts for the International Sale of Goods (the "Vienna Sales Convention") and the law of the Netherlands.
2. Any dispute which may arise pursuant to an Agreement between the Seller and a Buyer or which is directly or indirectly related to same, shall only be brought before a competent court judge in the District Court of Zeeland and West Brabant, having its seat in Breda, the Netherlands.