

TERMS & CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

I. GENERAL CONDITIONS

1. These terms and conditions apply to all tenders, proposals and submissions made to or requested from *Sachtleben Minerals GmbH & Co KG* and shall be in addition to any subsequent conditions effectively agreed by the parties, and may not be waived except by written consent signed on behalf of Sachtleben Minerals by duly authorized officials. Sachtleben Minerals hereby objects other general terms and conditions than these.
2. Conclusion of contract is only effective in law, as we confirm the submission, tenders or else by written acceptance note. Where any ambiguity or discrepancy exists between the terms and conditions and any attached document, these terms and conditions shall take precedence. The contracting party [“the Supplier”] shall not assign, sublet or transfer any right or obligation under the agreement without the written consent of Sachtleben Minerals.
3. All offers, bids and proposals by Sachtleben Minerals are non-binding until written consent by written acceptance is effective.

II. GOODS & SERVICES

1. For the supply of goods, if not otherwise agreed upon in writing, delivery has to conform to *DAP Wolfach, BW, Germany – Sachtleben Minerals Plant* pursuant Incoterms 2010. Freight-insurance is subject to individual agreements.
2. Sachtleben Minerals hereby objects to any retention of title after working up or processing. The Supplier warrants that full, clear and unrestricted title will be given to the Buyer clear of any encumbrances. It also objects to any limitation of liability concerning limitation periods for defects under 2 years in case of goods and services and under 5 years in case of construction works.
3. Any default notice of incomplete, faulty, defect or otherwise wrong delivery of goods is considered as timely pursuant sec. 377 Federal German Commercial Code [*Handelsgesetzbuch*], if a default’s notice is submitted within 20 working days. A working day is every day but not Sunday, Saturday and any legal holiday in Baden-Wuerttemberg, Germany.
4. The Supplier warrants all goods and services against defects within the statutory defects liability period and also warrants conformity with the specifications, qualities and data, agreed upon in the written acceptance [q.v. no. I.2].
5. Upon receipt of a notice from Sachtleben Minerals representative of any defect in any good during the defects liability period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to Sachtleben Minerals prior to the expiration of the time specified in the notice. If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, Sachtleben Minerals may perform or cause to be performed such redesign,

repair or replacement at the Supplier's risk and cost and any costs and expenses incurred by Sachtleben Minerals will be recoverable from the Supplier as a debt due and payable.

6. Any performance obligation as specifications, data or qualities have to be passed on to the Supplier's own suppliers and subcontractors. In case the Supplier is not liable under German Civil Law, because his actual fault cannot be established, he is immediately and in advance obliged to assignment of his own liability rights and claims for his own supplier's underperformance, defects or other breaches of duty. The assignment is due pursuant sec. 285 German Civil Code ['BGB']. This term also applies in case of third-party deals.

7. Mock-ups and drawings have to be turned over to Sachtleben Minerals by the Supplier. Necessary tools are also to be turned over. Sachtleben Minerals obtains all property rights on such tools, mock-ups and drawings and necessary licenses by the Supplier.

III. CUSTOMS & TAXES

1. The contract price is the aggregate amount payable excluding taxes and customs. The Supplier shall ensure that each invoice it presents to Sachtleben Minerals in respect of any Transaction Taxes is a Tax Invoice. If the supplier fails to provide Sachtleben Minerals with a Tax Invoice within the time period required by applicable law of the applicable jurisdiction, Sachtleben Minerals is entitled to withhold payment of a reasonable amount with respect to the assessed duties.

2. Each party will take all reasonable steps to cooperate with and provide all necessary assistance to the other party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose. be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and use its best endeavours to ensure that any goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements.

3. The Supplier will provide Sachtleben Minerals with all information and documentation necessary to make, in accordance with any applicable laws, applications or certifications for drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements. Where any such application or certification is successful, the supplier will pass on to Sachtleben Minerals the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the contract price.

4. This clause applies regardless of the shipping, insurance or freight terms used [q.v. no. II.1].

IV. INTELLECTUAL PROPERTY RIGHTS

1. The Supplier grants Sachtleben Minerals an irrevocable, royalty-free and perpetual license for the provided goods and/or services.

2. The Supplier warrants, that it has obtained all necessary third-party Intellectual Property Rights to use relevant goods and / or services and, that it will not breach any third-party Intellectual Property Rights.

3. The Supplier indemnifies Sachtleben Minerals and must keep it indemnified in respect of any liabilities incurred or sustained by Sachtleben Minerals resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by the performance of the Supply by the Supplier; or the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Supplier; or the use and enjoyment of the Supply by Sachtleben Minerals.

4. If Sachtleben Minerals is prevented from operating or using the goods and/or any services or any part of the goods and/or any associated services as a result of any claim in relation to an infringement of Intellectual Property Rights, the Supplier must at its cost take all reasonable steps to procure for Sachtleben Minerals the right to operate or use the goods and/or any services or the relevant part of the goods for the purpose for which it was intended. Sachtleben Minerals is also entitled to obtain any necessary license at the cost of the Supplier. If neither the Supplier or Sachtleben Minerals can procure the necessary license within reasonable period of time, Sachtleben Minerals has the right to withdraw from contact and to damages and interest arising from the lack of license and the removal of the goods and/or services.

V. DELIVERY, DEFAULT

1. All periods, calendar dates and terms agreed upon in the written acceptance are mandatory. Sachtleben Minerals is entitled to withdrawal, damages and interest without any default notice after such mandatory delivery period or delivery date has elapsed without due performance.

2. If the Supplier realises in time, that it will not meet the deadlines, it is obliged to notice Sachtleben Minerals in writing without delay.

3. A contractual period, term or deadline cannot be extended without prior written acceptance by Sachtleben Minerals upon said notice [q.v. no. V.2].

VI. CONFIDENTIALITY

1. The Supplier agrees to hold in strict confidence all confidential information and not to disclose any circumstances, data, information or else about or in connection with Sachtleben Minerals and its business. This term also applies on Sachtleben Minerals business contacts.

2. The Supplier can use Sachtleben Minerals as a reference only with prior written acceptance.

VII. DISPUTE RESOLUTION & GOVERNING LAW

1. All contracts with Suppliers of any goods and services are governed by the laws and statutes of Baden-Wuerttemberg and the Federal Republic of Germany. The Parties hereby agree to rule out and ban the C.I.S.G. - United Nations Convention on Contracts for the International Sale of Goods.

2. All disputes between Sachtleben Minerals and the Supplier arising out of or under the contract are exclusively resolved by Arbitration, if the amount in dispute is 100,000 € [one hundred thousand] or more. Exclusive Jurisdiction and Venue has the Court of Arbitration provided by the Basel Chamber of Commerce. The Swiss Arbitration Rules -attached hereto as supplement- apply. Place of trial shall be Basel, Switzerland.

3. Other disputes with an amount in dispute lesser than 100,000 € [one hundred thousand] are resolved by the Offenburg District Court with exclusive jurisdiction and venue.

VIII. FORM OF NOTICES & SEVERABILITY

1. Any demand, consent or other communication given or made pursuant to the contract must be in writing. Such written notice will be taken to be duly given also by Facsimile /Fax or E-Mail.

2. Any provision of the contract which is ineffective, prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the contract Where a provision is ineffective, prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the contract.