

General Terms and Conditions

Wester Mineralien GmbH and Wester Tonbergbau KG

Version dated: May 2021

I. General Remarks

Sec. 1

Scope Of Application

- 1.1 These General Terms and Conditions (hereinafter referred to as the “**T&Cs**”) apply to all contracts concluded by and between Wester Mineralien GmbH, recorded with the commercial register of the District Court of Bonn, *HRB* [commercial register, section B] 5190, represented by the managing director, Harald Wester, and/or Wester Tonbergbau KG, recorded with the commercial register of the District Court of Bonn, *HRA* [commercial register, section A] 762, represented by the general partner, Harald Wester, both having their registered office at Heerstraße 41, 53347 Alfter-Witterschlick (hereinafter referred to as “**Seller**”, “**We**”, or “**Us**”), on the one hand, and our “**Customer**” (hereinafter referred to as “**You**” and/or “**Your**”), on the other hand.
- 1.2 Our T&Cs apply exclusively. Any deviating, conflicting, or supplementary general terms and conditions of Customers are of the essence only if We expressly agreed to them being applicable. In any case, the requirement of consent also applies, for example, if We perform the services despite being aware of Customer’s general terms and conditions.
- 1.3 Unless expressly stated otherwise in individual cases, Our offers are exclusively directed at entrepreneurs in terms of sec. 14 of the *BGB* [*Bürgerliches Gesetzbuch*—German Civil Code].

Sec. 2

Conclusion Of The Contract

- 2.1 Unless expressly stated otherwise in individual cases, the presentation and advertising of articles, including the indication of prices, represent no binding offers to conclude a purchase contract.
- 2.2 Our offers and cost estimates are subject to changes. You will be bound by any enquiries You submitted, or cost estimates You signed for a period of two weeks.
- 2.3 The contract will be concluded only after You were provided with Our order confirmation in text form or once the services are provided.
- 2.4 With regard to contract processing activities, Our order confirmations are always subject to inspections of the goods to be supplied by taking samples and by submitting safety data sheets. We immediately inform the Customer of the result of Our inspections.

Sec. 3
Prices, Due Dates, And Customer's Default Of Payment

- 3.1 All prices stated by Us are indicated in Euro, unless otherwise indicated in individual cases, excluding value-added tax, excluding packaging costs, and excluding transportation costs.
- 3.2 Unless expressly agreed otherwise in text form in individual cases, all payments are due 14 days after receiving the invoice.
- 3.3 Customer is entitled to offsetting or rights of retention only on the condition that their counterclaims were legally established, that they are undisputed, or that they were acknowledged by Us. Furthermore, Customer is entitled to exercise a right of retention only to the extent that their counterclaim is based on the same contractual relationship.

Sec. 4
Shipping; Bearing Of Risks

- 4.1 Unless otherwise agreed in individual cases in text form, the services shall be rendered on an ex-works basis.
- 4.2 Any shipment of the goods is provided for on behalf of Customer and at their risk and their expense.
- 4.3 In each case, the risk will be transferred to Customer upon handover to the forwarding agent or haulage carrier, but in no case later than upon the goods leaving the plant and/or the warehouse, even if delivery free of transportation charges was agreed upon.
- 4.4 If shipment is delayed for reasons within Customer's control, the risk is transferred to Customer on the day of the latter receiving the notification of readiness for dispatch.

Sec. 5
Deadlines And Dates, Delivery Times, Default In Delivery, And Default Of Acceptance

- 5.1 Deadlines and dates specified by Us are only binding if they are expressly agreed upon in text form.
- 5.2 Unless expressly agreed otherwise in individual cases, delivery and/or service deadlines and delivery and/or service dates are considered to be met if the delivery object left, was picked up at, or was indicated to be ready for shipment from the plant or the distributing warehouse by the time this period expired.
- 5.3 If We are in default of delivery and/or performance, Customer may assert the claims or rights they are entitled to only once they set a reasonable minimum grace period of two weeks again in writing and in the case where the delay in delivery or performance continues. For Us to comply with Our delivery and/or service obligations, it is necessary

that Customer timely and properly fulfills their duties and other obligations; defense of lack of performance of the contract continues to be available to the Parties.

- 5.4 After the period according to subsec. 5.3 above expired and in the case where We continue to be in default in delivery or performance, Customer is entitled to demand lump-sum compensation for each completed week of delay in the amount of 3 % of the delivery value, but not more than a maximum of 10 % of the delivery value, without the need for setting another deadline. Further claims of Customer for damages and for reimbursement of expenses due to delay in delivery are—to the extent permitted by law—excluded.
- 5.5 The provisions under subsec. 5.4 above do not apply to the extent that mandatory liability is imposed in cases of willful intent or gross negligence or in the event of injuries to life, limb, and health. This does not entail a change to the burden of proof to the disadvantage of Customer.
- 5.6 Customer's legal right of withdrawal remains unaffected by this, but this generally depends on Us being responsible for the delay.
- 5.7 Customer declares, if We request this and within a reasonable period of time, whether they intend to withdraw from the contract after the deadline due to delay in delivery expired or, as an alternative, to demand damages and/or reimbursement of expenses instead of performance, or whether they insist on delivery.
- 5.8 If Customer is in default of acceptance or if they violate other acceptance periods, We are entitled to demand compensation for damage incurred by Us, including any additional expenses. In this case, the risk of accidental loss or that of accidental deterioration with regard to the delivery object also passes to Customer at the time when the latter is in default of acceptance or when they failed to comply with the notice requiring delivery; We reserve the right to assert additional claims.

Sec. 6 Liability And Force Majeure (Including Pandemics)

- 6.1 In cases of force majeure, the Contractual Party affected by this is released from their duty to deliver or accept for as long as that event exists and to the extent of the effects. Force majeure means any event beyond the control of the respective Contractual Party affected by the event and preventing that Party in whole or in part from fulfilling their obligations, including, but not limited to, fire damage, flooding, strikes, lawful lockouts, operational disruptions not caused by that Party, or official dispositions. Force majeure events also exist in the case of shutdowns or operational disruptions caused by epidemics or pandemics; this applies in particular to the period in which Covid-19 pandemic persists.

- 6.2 Supply difficulties and other causes for default in performance on the part of Contractor's upstream suppliers are considered to be force majeure events only if these upstream suppliers are themselves prevented from rendering the services they must provide by an event in accordance with subsec. 6.1 above.
- 6.3 The Party concerned will notify the other Party, without undue delay, of the occurrence and the elimination of force majeure events and make their best efforts for the purpose of eliminating the force majeure event and of limiting its effects as far as possible.
- 6.4 Cases of force majeure do not automatically lead to the contract being cancelled. If force majeure events occur, the Contractual Parties agree upon the subsequent steps to be taken and determine whether the products not supplied during this period are to be delivered after the force majeure event is over.
- 6.5 In cases of willful intent or gross negligence on Our part or that of Our vicarious agents, We are liable in accordance with the statutory provisions. Apart from the above, We are liable only in accordance with mandatory provisions under German product liability law, for injuries to life, body, or health, or for culpable violations of essential contractual obligations. The claim for damages due to violations of essential contractual obligations is, however, limited to the foreseeable damage that is typical of this type of contract.

II. General Terms And Conditions Of Sale And Delivery

Sec. 7 Samples And Deviations

- 7.1 Any samples provided demonstrate the condition of the material. Samples provided and their properties must not be considered to represent quality features of the goods and, thus, the subject matter of the contract, unless the Parties expressly agreed otherwise in text form in individual cases.
- 7.2 Our products may always show slight deviations, especially when it comes to their color, without this representing a material defect. Especially in the case of several deliveries of the same material, it is possible that deliveries come from different melting batches, meaning that there are visual differences; this does not constitute a material defect.
- 7.3 Deviations regarding the weight of up to 3 % and regarding the grain size of up to 5 % are customary in this business sector and, therefore, do not represent a material defect.

Sec. 8 Reservation Of Title

- 8.1 The sold goods remain Our property until any and all claims against Customer arising from the business relationship were fulfilled. The goods and any goods replacing the ones delivered first pursuant to the below provisions and subject to retention of title are hereinafter referred to as the “**Goods Subject to Reservation of Title**”.
- 8.2 Customer is entitled to process and sell the Goods Subject to Reservation of Title in the ordinary course of business until such time as utilization takes place (subsec. 8.5). Pledging and assignments by way of security are permissible only if Our consent was obtained in text form.
- 8.3 In the event of reselling, however, Customer assigns to Us, right from the beginning, all claims in the amount of the final invoice amount, including value-added tax, that accrue to them as a result of reselling against their customers or third parties, regardless of whether the goods supplied were resold without or after processing.
- 8.4 In the event of violations of obligations, in particular in the event of default of payment, We are entitled to demand the return of the delivered object and/or to withdraw from the contract, even without setting a deadline; Customer shall then return the supplied goods. Withdrawal from the contract on Our part is not required for taking back the goods and/or asserting the right. Our request for returning the goods, assertion of reservation of title on Our part, or the attachment of the delivered goods by Us does not constitute a declaration of withdrawal, unless this is expressly declared in text form.
- 8.5 After taking back the Goods Subject to Reservation of Title, We have a right to exploit them (“**Utilization**”). The utilization proceeds shall be offset against Customer’s liabilities—less reasonable costs of utilization.
- 8.6 Customer shall treat the delivered goods with reasonable care, safely and properly store them on a free-of-charge basis, and purchase sufficient insurance if We request this at their own expense for the period of reservation of title, in particular for protection against damage caused by fire, water, and theft. Customer hereby assigns to Us any and all claims against the insurance company. If maintenance or inspection work is to be carried out, Customer shall carry out this work in good time at their own expense. In the event of attachments or other types of interference by third parties, Customer shall immediately inform Us in writing so that we are able to file a lawsuit pursuant to sec. 771 of the *ZPO* [*Zivilgesetzbuch*—German Code of Civil Procedure]. Insofar as such third party is not able to reimburse Us for extrajudicial and judicial costs resulting from lawsuit pursuant to sec. 771 of the *ZPO*, Customer is liable for the loss We incur;
- 8.7 the Seller accepts the assignment. Customer is also authorized to collect these accounts receivable after their assignment. The Seller’s right to collect any accounts receivable themselves is not affected by this; however, the Seller undertakes not to collect these accounts receivable for as long as the Seller properly fulfils their payment and other obligations and, in particular, for as long as no application for the institution of insolvency

proceedings is made or payments are not suspended. In the case where this obligation to noncollection no longer exists, We may request that Customer inform Us about the accounts receivable being assigned and the names of the respective debtors, provide all information required for collection, hand over the documents relating to this, and inform the debtors about the assignment.

- 8.8 The processing or transformation of the Goods Subject to Reservation of Title by Customer is considered to be carried out by Us, without this establishing any liabilities at Our expense.
- 8.9 In the case where the Goods Subject to Reservation of Title We delivered are processed together with other items We do not own, We acquire joint ownership of those new items in proportion of the invoice value of the Goods Subject to Reservation of Title to that of the remaining goods. If Our goods are mixed or combined with other goods and if our property thereof ceases to exist, it is agreed, right from the beginning, that ownership rights of Customer in the combined goods or the united goods is transferred to Us to the extent of our claim in this regard and that Customer stores them on Our behalf on a free-of-charge basis.
- 8.10 We will release the Goods Subject to Reservation of Title and any other goods or claims replacing them on the condition that their value exceeds the amount of collateralized claims by more than 50 %; the Seller is responsible for selecting the items to be released thereunder.

III. Contract Processing

Sec. 9

Delivery And Laboratory Inspection Of The Goods; Reservation Of The Right of Withdrawal; Quantity Differences; Pickup

- 9.1 Upon delivery of the goods to be processed, We will take a sample and have this checked at a laboratory before starting any processing activities.
- 9.2 The results of that laboratory examination will be available not later than one week after receiving the goods to be processed.
- 9.3 We will immediately inform Customer in text form about the result of that laboratory examination.
- 9.4 If laboratory examinations reveal significant deviations of the goods supplied from information provided at the time of contract conclusion (see subsec. 2.4 above), We are entitled to withdraw from the contract by submitting a declaration in text form to Customer within one week from becoming aware of that deviation.

- 9.5 If We withdraw from the above contract, Customer must pick up and remove the goods at their own expense without undue delay, at the latest one week after receiving the declaration of withdrawal.
- 9.6 Unless the Parties expressly agreed otherwise in text form, Customer shall immediately, that is, no later than one week after receiving a written notification of contract processing activities being completed, collect all the goods at their own expense.
- 9.7 If the share of processing is unexpectedly high or low, this has no effect on affect the contractual agreements regarding remuneration and/or the duty to pick up and remove the goods in accordance with the subsec. 9.6 above.

Sec. 10 Default Of Customer; Damages

- 10.1 If Customer fails to collect the goods within the deadlines specified in subsection(s) 9.5 and/or 9.6, they are in default without the need for further requests from Us.
- 10.2 In the case of default in accordance with subsec. 10.1 above, Customer shall pay to Us the amount of € 5 per m² of storage space and day for storing the goods. Customer still has a right to produce evidence showing that We incurred no damage at all or that damage We incurred is smaller.
- 10.3 We expressly reserve additional rights, in particular claims for damages, with it in this case being necessary to offset the payment obligation in accordance with subsec. 10.2 above.

IV. Final Provisions

Sec. 11 Final Provisions

- 11.1 Should provisions of this Contract be or become totally or partially invalid and/or unenforceable, this does not affect validity of the other provisions; the same applies if this Contract contains a contractual gap. Invalid or unenforceable provisions will be replaced by valid and enforceable provisions that come as close as possible to the invalid or unenforceable provisions from an economic point of view. In the event of a contractual gap, the legally valid provision upon that the Contractual Parties would have agreed according to the sense and the purpose of this Agreement applies if they had considered this matter right from the beginning.

- 11.2 There are no verbal ancillary arrangements. Amendments of and supplements to the Contract shall be made in text form; this applies also to an agreement that cancels this text form requirement.
- 11.3 The law of the Federal Republic of Germany is applicable to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.4 To the extent permitted by law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship, its initiation, and termination is our registered office in Alfter.