

Poortershaven

INDUSTRIËLE MINERALEN B.V. – MINÉRAUX POUR L'INDUSTRIE – INDUSTRIAL MINERALS – INDUSTRIEMINERALIEN – MINERALI INDUSTRIALI
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General conditions of sale

1 Definitions

1.1 In these General Conditions of purchase, hereinafter to be referred to as “Conditions”:
 “We”/“us”: means: Poortershaven Industriële Mineralen B.V., its legal successors and any companies related to Poortershaven Industriële Mineralen B.V. and their legal successors.

“Buyer”: means: every person or corporation with whom we negotiate the making of a Contract of Sale and with whom we make such Contract.

“Contract”: means: every Contract of Sale which is made between the Buyer and us, each and every change or addition made to any such Contract, as well as all (legal) acts performed for the purposes of preparing and carrying out any such Contract.

2 Scope of application

2.1 These Conditions are part of all Contracts and shall apply to all (legal) acts incidental thereto performed by the Buyer and by us.

2.2 We expressly exclude applicability of any general or specific conditions or terms of the Buyer.

3 Conclusion of a Contract

3.1 Our at the request of a buyer submitted quotations shall not bind us unless the quotation expressly states that the prices are “fixed” and a term of validity of the quotation is determined. Confirmation of our quotations by the Buyer conclude a contract.

3.2 In the event that any part of our request for a quotation contains manifest errors and/or inconsistencies, the Buyer is to consult with us prior to submitting a quotation.

3.3 In the event that no Contract is concluded, all documents supplied by us in the context of the submission of an offer by the Buyer shall be returned to us free of charge if and when this is stated in our quotation.

3.4 If the contracted goods are temporarily or permanently not available, irrespective of the cause thereof, we can deliver other goods which are as similar as possible to the contracted goods, maintaining the contracted price.

4 Amendments

Changes or additions to any of the provisions of these Conditions or a Contract shall be valid only if recorded in writing and shall apply only to the individual Contract concerned.

5 Prices

5.1 The agreed prices shall be fixed prices and shall be expressed in the agreed currency, excluding VAT. The agreed prices shall include all export duties, import duties and excise duties, as well as all other charges or taxes imposed or levied in respect of the products and any additional expenses incidental to the performance of the Contract, including

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documentation, packaging and despatch, save as otherwise agreed in the contract or the contracted delivery term implies otherwise.

- 5.2 The prices quoted are based on the circumstances at the time of the quotation or the conclusion of the contract which are directly or indirectly influencing our prices like purchase-prices, levies and exchange rates etc. If these circumstances change after the quotation or the conclusion of the contract but before the delivery of the goods, we have the right to charge the increased costs to the Buyer.
- 6 Delivery and time of delivery
- 6.1 To the extent that the parties have agreed any conditions of supply which are customary in trading, such as franco, FOB, CIF and CF, the most recent version of the Inco terms of the International Chamber of Commerce in Paris shall be applicable thereto, unless expressly agreed otherwise.
- 6.2 Delivery shall take place according to the agreed delivery term. If no delivery term is agreed, the delivery will be DDU-house (franco). If no packaging and/or other requirements are agreed, we are authorised to determine such requirements on behalf and for the account of the Buyer.
- 6.3 Our quotation for the time for delivery shall be based on the circumstances applying to us at the time of the conclusion of the Contract and, in so far as the time for delivery depends on the performance of third parties, on the information supplied by such third parties to us. We shall make every effort to observe the time for delivery as closely as possible, but this time of delivery will not be an absolute deadline.
- 6.4 If the time of delivery is exceeded, the Buyer is only entitled to a reasonable compensation, notwithstanding the provisions of Article 11.2 of these Conditions. The Buyer can only dissolve the Contract if and when the time of delivery is exceeded to such an extent that it is reasonable that the Buyer no longer accepts this part of the Contract.
- 6.5 If it is agreed that the total contract quantity is delivered in more separate consignments within a certain agreed period, the Buyer is obligated to call for these consignments with a reasonable spread. If the Buyer does not apply a reasonable spread, we can, notwithstanding our rights to compensation of damages, dissolve the contract for the consignments still to be delivered.
- 6.6 Even if not explicitly agreed, we have the right to perform the contract by delivery in more separate consignments. We will apply a reasonable spread.
- 6.7 If the Buyer fails to take delivery of the goods or fails to do so within the agreed time, such failure shall constitute an event of default by the Buyer, without prior notice being required. In that case we will be entitled to store the goods at the risk and at the expense of the Buyer or to sell the goods to a third party. The Buyer shall remain liable for

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payment of the purchase price, increased with interests and costs (as compensation for damages), less the proceeds of sale to a third party.

7 Inspection upon delivery and acceptance

- 7.1 The Buyer will inspect the delivered goods upon delivery.
- 7.2 In case of visible non-conformity and shortage the Buyer has to file a complaint with us within 8 days of delivery, failing which the Buyer loses his right to complain.
- 7.3 In case of defects not visible at delivery, the Buyer will have to file a complaint with us within 14 days of the defect being discovered or could have been discovered, failing which the Buyer loses his right to complain.
- 7.4 Complaints have to be made to us in writing, stating the nature of the defect.
- 7.5 The Buyer shall give us all such assistance as we may require to establish our liability for defects or to take the measures we deem necessary. If the Buyer does not comply or establishing liability is no longer possible, the complaint will not be considered and the Buyer has no rights against us.
- 7.6 The Customer shall not be allowed to return the goods before we have agreed thereto. Only in the event the Buyer has applied correct and justified, the costs of returning the goods are for our account. Before returning the goods, the Buyer has to contact us.
- 7.7 In the event the Customer applied timely, correct and justified in respect of any defects of the goods, our liability arising therefrom shall be limited to the obligations described in Article 11.

8 Transfer of title and risk

- 8.1 Title to the goods transfers only after the Buyer has paid for the goods. In the event of delivery in several separate consignments, title of each consignment transfers after payment of this consignment.
- 8.2 The risk for the goods transfers to the Buyer at the time at the moment that the goods are delivered free to the buyer (franco), unless the agreed delivery term implies otherwise.
- 8.3 As long as we have title to the goods, the Buyer will inform us instantly (first by telephone and subsequently in writing) of (potential) attachment of the goods or of other claims made regarding goods delivered by us. The Buyer will at our first demand inform us of the location of the goods.
- 8.4 In case of attachment, extension of payment or bankruptcy, the Buyer will notify the court bailiff effecting the attachment, the party making the attachment or the receiver of our title to the goods. As far as the attachment prohibits our free access to the goods, the Buyer will arrange for the attachment to be lifted as soon as possible.

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9 Payment

- 9.1 Unless agreed otherwise, the Buyer will make payment on our invoices in the currency mentioned and within the term of payment granted to the bank account stated. Upon the mere expiration of the term of payment, the Buyer is in default without prior notice being required. In such case, the all amounts owed to us, regardless on what account, are immediately due and the Buyer is legal interest due.
- 9.2 All amounts due by the Buyer shall be payable without any discount or deduction. The Buyer cannot set off any amounts due to us against any amounts due by us to the Buyer. The Buyer cannot suspend any payments due.
- 9.3 If we, at any time after the concluding of a contract have reasonable doubt regarding the Buyer being able to meet its financial obligations, we can demand the Buyer to provide us with an unconditional bank guarantee, rendered by a bank which is acceptable to us, to secure the performance of the obligations of the Buyer.
- 9.4 From the day payment by the Buyer is due until the day that payment is made in full, the Buyer has to compensate us interest at a rate of 1,5% per month, calculated over the total invoice amount. For the interest being due, no prior notice or reminder is required.
- 9.5 If the Buyer is in default, he is liable to compensate the costs of collection in full, including court and attorney fees.

10 Force Majeure

- 10.1 If we as a consequence of force majeure are prevented from fulfilling our obligations to the Buyer, such obligations shall be suspended for the duration of the event of force majeure.
- 10.2 If the event of force majeure has continued for 3 months, both parties shall be entitled to cancel the contract in whole or in part as far as the event of force majeure justifies such cancellation.
- 10.3 In the event of force majeure, the Buyer shall not be entitled to compensation of damages, even if we might profit from the event of force majeure.
- 10.4 Force majeure shall mean any event beyond our control which prevents us from fulfilling all or any of our obligations or by reason of which we cannot reasonably be required to fulfil our obligations, regardless whether such event was foreseeable at the time of conclusion of the Contract. Events of force majeure shall include but not limited to: strikes and lock-outs, stagnations or other problems occurring during production at our works or the works of our suppliers and/or during transport, whether performed by us or by third parties, and/or measures imposed by any government authority, as well as the failure to obtain any license from the authorities.
- 10.5 We shall notify the Buyer of any (foreseeable) event of force majeure as soon as possible.

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11 Liability

- 11.1 In the event we are liable for a defect or shortage according to Article 7 of these Conditions, we may, at our option, credit the Buyer (partially) for the purchase price or take back the not delivered/defected goods and deliver/replace the goods.
- 11.2 Our aggregate liability under the Contract for any default on our side shall be limited to the purchase price paid by the Buyer under the Contract.
- 11.3 Save our wilful intent or gross negligence, we are not liable for any further damages of the Buyer such as loss of profit, consequential damages, environmental damages or immaterial damages. It is explicitly stated that we are not liable for damages resulting from wilful intent or gross negligence of our employees or third parties we contracted.
- 11.4 All claims the Buyer might have under the Contract must be made valid within one year before the court competent according to Article 13, failing which the Buyer loses his right to do so.

12 Termination

- 12.1 If the Buyer is in default with regard to the events mentioned in Article 12.2, all the accounts receivable, regardless on what account, are immediately due in full and we have the right to suspend the performance of any part of any Contract, entirely without prejudice to any of our rights under these Conditions, the Contract or law.
- 12.2 In the event the Buyer is granted (provisional) suspension of payment, bankruptcy, compulsory liquidation, all Contracts shall be terminated by operation of law, unless we demand (partial) performance of the Contract within a reasonable time.

13 Choice of law and jurisdiction

- 13.1 These Conditions as well as the Contract shall be governed by Netherlands law.
- 13.2 The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable to these conditions and the Contract.
- 13.3 Any dispute arising from the Contract or these Conditions, unless otherwise prescribed by law, shall be submitted to the court of competent jurisdiction in Rotterdam, always provided that we shall have the right to bring actions, concurrently or otherwise, against the Buyer in any other courts of law which have the power to hear and decide on such cases.