

# GENERAL CONDITIONS OF SALE OF ICL ESSENTIAL MINERALS

## 1 GENERAL APPLICABILITY

1.1 These General Conditions of Sale and the express terms contained in any related Contract of Sale (defined below) constitute the complete and exclusive agreement of the seller ("Seller") and the buyer ("Buyer"), each of which is identified in the respective accompanying quotation, credit application, offer, order acknowledgement, Contract for Sale, Order Confirmation (defined below) or invoice. These General Conditions of Sale may not be added to, modified, superseded, or otherwise amended or altered, except by a written document signed by an authorized representative of the Seller. If there is a conflict between the provisions of the Contract for Sale and these General Conditions of Sale, then the terms of the Contract for Sale shall govern.

1.2 No modification of, addition to, or deletion from the terms and conditions contained herein shall be affected by the performance by the Seller, and the Seller specifically rejects all other or different terms and conditions contained in any of the Buyer's documents or otherwise referred to by the Buyer.

## 2 DEFINITIONS

Throughout these General Conditions of Sale, the following terms shall have the respective meanings set forth below:

"Agreement" means, collectively, these General Conditions of Sale, and any relevant offers, quotations, Contract of Sale, Purchase Orders, Order Confirmations, and invoices, subject to Section 1.

"Contract for Sale" means a contract for sale of Products either delivered by the Seller to the Buyer or otherwise signed by an authorized representative of the Seller, which sets forth, among other things, the type and quantity of the Products to be sold by Seller and purchased by Buyer, the term of the Agreement and the pricing of the Products.

"Incoterms 2010" means Incoterms 2010 Edition, published by the International Chamber of Commerce.

"Order Confirmation" means a confirmation issued by Seller to Buyer as a response to a Purchase Order, confirming the Products to be supplied by Seller pursuant to the Agreement.

"Products" means products or goods sold by Seller to Buyer pursuant to the Agreement.

"Purchase Order" means an order issued by Buyer to Seller for the supply of Products by Seller, including quantities and dates of delivery.

## 3 CONDITIONS TO ESTABLISHMENT OF THE AGREEMENT

Any offer or quotation issued by the Seller or any Purchase Order issued by the Buyer shall bind the Seller only after (i) the issuance by the Seller of an Order Confirmation; and (ii) establishment of the Buyer's credit worthiness to the Seller's satisfaction.

## 4 PRICES

4.1 The prices of the Products shall be as specified in the Contract for Sale or the Order Confirmation, subject to adjustment in accordance with these General Conditions of Sale.

4.2 Unless otherwise agreed in writing, in addition to the price payable for the Products, the Buyer shall pay or shall promptly reimburse the Seller for all shipping charges, insurance costs, and all Taxes with respect to, or measured by, the manufacture, sale, use, shipment, importation, transportation or delivery of the Products. For the purposes of this Section, "Taxes" means any and all present and future sales, stamp, GST, VAT, use and excise taxes, withholding of income tax at source, and any other similar taxes, duties, levies, fees, withholdings and charges of any kind imposed by any governmental authority on any amounts payable by Buyer, together with any interest or penalties imposed thereon.

## 5 DELIVERY

5.1 Delivery terms are subject to and shall be interpreted in accordance with the terms of Incoterms 2010 specified in the Agreement.

5.2 Unless otherwise specifically agreed to by the parties in writing, the Seller may deliver the Products in partial deliveries and invoice the Buyer for each such partial delivery accordingly.

5.3 The Seller is only responsible for delivering the Products to the location specified in the Agreement. In no event shall Seller be bound to tender delivery of any quantities for which Buyer has not given shipping instructions.

5.4 Each delivery shall be considered as separate from other deliveries and the failure of any delivery shall not be a breach of the Agreement as to other deliveries.

5.6 The Seller's rights under this Section shall not be deemed waived or otherwise prejudiced by the Seller's delivery of the Products ordered under a Purchase Order after the delivery date set forth in such Purchase Order.

## 6 QUANTITY WEIGHT AND ANALYSIS

6.1 The Seller shall be deemed to have complied with the terms of the Agreement if, with respect to any delivery of Product, it supplies an excess or deficiency of up to 10 (ten) percent of the quantity to be delivered pursuant to this Agreement on the relevant delivery date. The Buyer shall pay for the quantity actually delivered. Seller's weights and quantities, which Seller shall determine in good faith using reasonable methodologies, shall govern unless proven to be in error.

6.2 The Seller may sample and analyze a consignment/shipment of the Products to determine the content and the conformity thereof with the Agreement, and such sampling and analysis, if conducted, will be considered as conclusive and final evidence in any claim, dispute or controversy that may arise.

## 7 PAYMENT

7.1 Payment shall be made as provided in the Agreement and in accordance with the payment instructions stated in the Sellers' duly issued invoice.

7.2 In the event the Buyer or any affiliate thereof fails to pay for any Product or products or services rendered by Seller or any affiliate thereof to Buyer, when such payment becomes due, whether under the Agreement or any other agreements between Buyer or its affiliates and Seller or its affiliates, the Seller may, in its sole discretion, and without prejudice to any right or remedy available to it, terminate or suspend future deliveries of Products to Buyer. In the event the Buyer's financial worthiness becomes unsatisfactory to the Seller, the Seller may: (i) elect to withhold future shipments of Products until Buyer's financial credit worthiness has been established to the Seller's satisfaction; (ii) require the Buyer to make cash payments as to future shipments; (iii) require other security for payment before future shipments of Products are provided to the Buyer including but not limited to financial statements, a letter of credit by an entity approved by the Seller, or a payment guarantee by a parent or affiliate of the Buyer; (iv) demand return from the Buyer of any Products for which payment has not been made; and/or (v) terminate the Agreement in accordance with Section 14. The Buyer shall be liable under the aforesaid circumstances for any and all losses and damages the Seller may suffer related thereto.

7.3 Without prejudice to any other right or remedy available to it, any default by the Buyer to make any payment shall entitle the Seller to the following: (i) calculated as of the invoice date, an interest of three months Libor plus 5 (five) percent a year on the amount in default; (ii) reimbursement of all costs, including collection costs and legal fees, incurred by the Seller to recover all or part of its payment claims from the Buyer; (iii) subject to and in accordance with applicable law, collect the Products without notice of default, or legal intervention; (iv) set-off payments received from Buyer for Product under the Agreement to cover debts or any non-payment of Seller or any affiliate thereof under any other agreements between Buyer and/or its affiliates and/or Seller and/or its affiliates; and (v) stop or refrain from delivering any Product or products under the Agreement and/or any other agreement it may have with Buyer or with any affiliate thereof.

7.4 The Buyer shall not be entitled to withhold payment or to deduct from the price invoiced to it for any reason, including (without limitation) on the grounds that it has a claim or set-off against the Seller or that it has made the payment to a third party that fraudulently represented itself to be the Seller.

7.5 The remedies contained in this Section are cumulative and shall be in addition to remedies available to the Seller under any applicable law.

## 8 RETENTION OF TITLE

Title to the Products shall pass to the Buyer once the purchase price is received by Seller in full. Risk of loss or damage to the Products shall pass to the Buyer in accordance with the provisions of the agreed Incoterms 2010.

## 9 FORCE MAJEURE

Neither party shall be liable in any respect for failure to perform its obligations under the Agreement if hindered, delayed or prevented, directly or indirectly due to an event or for a reason beyond such party's reasonable control. Such events include, but are not limited to, war, riot, sabotage, acts of terrorism, explosion, accident, flood, fire, or other acts of God, lack of adequate fuel, power, raw materials, labor, containers or transportation facilities, compliance with governmental requests, laws, regulations, orders or actions, breakage or failure of machinery or apparatus, national defense requirements, or labor trouble, strike, lockout or injunction (in no event shall either party be required to settle a labor dispute against its own best judgment). If Seller determines that any such event has occurred, Seller may suspend or cancel all or any part of the deliveries under the Agreement and/or may allocate its available supply of Products, goods or materials (without being obligated to acquire additional supplies of Products, goods or materials or by locating and contracting with

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other sellers of Products, goods or new suppliers of raw materials) among itself, its affiliates and its purchasers in the Seller's sole discretion. Allocations, suspensions, or cancellations of deliveries or any part thereof under this Section, shall be made without liability, and such allocations, suspensions, or cancellations shall otherwise not affect the remaining terms of the Agreement.

Upon cessation of the Force Majeure, the party affected by the Force Majeure shall resume the performance of its contractual obligations as soon as reasonably possible.

## 10 ECONOMIC HARDSHIP

In addition to the other rights and remedies of the Seller set forth herein, if at any time during the term of the Agreement, the Seller experiences any event (including but not limited to, changes in market conditions, changes in applicable rates, duties, taxes or changes relating to the Products and/or increases in the prices of energy, raw materials or other materials necessary for the manufacture of the Products) that causes the continued manufacture or sale of the Products to the Buyer to be uneconomical, or otherwise creates an economic hardship for the Seller, then the Seller may, at its sole option and upon written notice to the Buyer, either (i) increase the price of the Products to cover such event; or (ii) terminate the Agreement upon thirty (30) days prior written notice to the Buyer. This Section shall be applied and construed separately from the force majeure provisions in the Agreement.

## 11 REPRESENTATIONS; WARRANTIES AND COVENANTS

11.1 The Seller warrants solely to Buyer that on the date of shipment of the Products, such Products will meet the Seller's standard specifications for the Products or such other specifications as have been expressly agreed in writing between the Seller and the Buyer. This warranty is specifically made and limited to Buyer in respect of the Products delivered to it in accordance with the Agreement. THE SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS.

11.2 The Buyer represents and warrants that: (i) it is not, nor are its representatives or anyone for whom it is acting, assisting, or owned or controlled directly or indirectly by, a person(s) designated, named, or identified pursuant to any national or international law or regulation imposing trade and economic sanctions, prohibitions or restrictions (a "Sanctioned Entity"); and (ii) it shall not resell the Products or have any commercial relationship with respect to the Products with any Sanctioned Entity. The Seller may terminate the Agreement immediately, without any liability, in the event of breach by the Buyer of this representation and warranty.

11.3 The Buyer will not make any disposition, by way of transshipment, re-export, diversion or otherwise of the Products to contrary to any applicable law, including but not limited to Israeli, US or EU export laws.

11.4 Seller makes no representation or warranty with respect to the accuracy of any tariff code classification information provided by Seller with respect to a Product. In no event will Seller be responsible to Buyer for any losses, liabilities or damages of any nature whatsoever resulting from the use or reliance upon such information. Buyer must make its own determination as to each Product's tariff code classification.

11.5 The Buyer acknowledges that it is aware that the Products, by their very nature, may be hazardous and, if so, shall apply the necessary professional and legal standards of diligence and shall strictly follow the Seller's instructions regarding the use, handling, storage and maintenance of such Products.

11.6 The Buyer is aware of the global increase in cyber-based attacks on organizations such as the Parties during the last few years. Buyer hereby represents that it is compliant with the requirements of FAR clause 52.204-21 (as may be amended, updated, revised or replaced by a similar regulation), which shall apply mutatis-mutandis to information systems owned or operated by the Buyer, which process, store, or transmit Seller information in connection with this Agreement. In electronic communication with the Seller it is Buyer's responsibility to verify that the party with whom it is corresponding is indeed the Seller and not a fraudster impersonating the Seller. Buyer shall be responsible for the breach of its own IT systems and social-engineering attack on its organization including (without limitation) in the event of phishing and impersonation by a third party fraudster to be the Seller.

11.7 Without limiting or derogating from Sections 7.4 or 11.6 above, Buyer warrants that if the Seller requests a change in the bank account, Buyer shall not pay any amount under this Agreement to a new bank account which has not been (i) confirmed in writing by two of Seller's authorized signatories (approved as such, in writing, by the Seller's legal counsel) accompanied by a call from the Seller's representative to the Buyer's representative on his/her land-line phone or by a video conference or mobile phone, and (ii) reconfirmed by Buyer's representative in a call to his/her Seller's representative on his/her land-line phone or by video conference. Any payment by Buyer to a new bank account shall not be deemed payment to Seller under this Agreement, unless Buyer has complied with the conditions set forth in (i) and (ii) in this Section 11.7. Buyer shall make best efforts to minimize the possibility of phishing, spoofing and other forms of social engineering and hacking on its IT

systems and undertakes to inform Seller of any suspicious activity or impersonation as Seller, immediately after it becomes aware of such activity or impersonation.

## 12 INSPECTION; INDEMNIFICATION; LIMITATIONS OF LIABILITY

12.1 The Buyer shall examine all Products for any damage, defect or shortage as soon as practically possible after delivery. All claims for any cause whatsoever (whether based in contract, negligence, strict liability, or otherwise) shall be deemed waived unless made in writing and received by the Seller promptly after discovery and in any event within thirty (30) days of the delivery of the Products giving rise to such claim; provided, however, that as to any claims that cannot be reasonably discovered within such thirty (30) day period, Buyer shall have sixty (60) days from the date of the delivery of the Products giving rise to the claim to make such claim in writing to Seller. Failure by the Buyer to provide the Seller with written notice of any claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim irrespective of whether the facts giving rise to such claim shall have then been discovered or whether processing, further manufacture, other use or resale of the Products shall have then taken place. If Buyer timely notifies Seller of any damage, defect or shortage, and subject to Section 11.1 above, Seller shall, in its sole discretion, either (i) replace such damaged or defective Products, or (ii) credit or refund the price for such damaged, defective or shortage in Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Seller shall not be liable for transportation charges for the return of the Products unless authorized in writing and in advance by the Seller. Buyer acknowledges and agrees that the remedies set forth in this Section 12.1 are Buyer's exclusive remedies for the delivery of damaged, defective or shortage in Products. Except as provided under this Section 12.1, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement to Seller.

12.2 The Seller and its affiliates shall not be liable to the Buyer for, and the Buyer assumes all liability for, and agrees to defend, indemnify and hold the Seller, its affiliates, and its and their respective directors, officers, employees, agents and suppliers, harmless against all losses, claims, suits, damages, liabilities, costs, fees (including import and export customs fees), and expenses (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) resulting from or arising out of (i) the Buyer's breach of the Agreement, (ii) the Buyer's distribution, possession, further manufacture, transportation, use or resale of the Products or any product or waste derived therefrom, whether such Products are used alone or in combination with other goods, (iii) the negligence or willful misconduct of the Buyer or its employees or agents, (iv) the Buyer's discharge or release of the Products or any product or waste derived therefrom into water, onto land or into the air, (v) the Buyer's exposing any person (including the Buyer's employees) to the Products or any product or waste derived therefrom, including failure to warn of such exposure, or (vi) any act (or failure to act) by the Buyer or its employees, agents or any person or entity acting on its or their behalf, in contravention of any applicable law or any safety procedures or instructions that the Seller provides to the Buyer or its employees, agents or any person or entity acting on its or their behalf, except to the extent such losses, claims, suits, damages, liabilities, costs and expenses are a direct result of the Seller's gross negligence or willful misconduct.

12.3 SELLER'S TOTAL LIABILITY TO BUYER ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS GIVING RISE TO SUCH CAUSE ACTUALLY RECEIVED BY SELLER, OR, AT THE SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH PRODUCTS. IN NO EVENT WILL THE SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR, MATERIALS OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOSS OF GOODWILL, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.4 In no event shall the Seller be liable to the Buyer for any technical or other advice provided to the Buyer with respect to the processing, further manufacture, use or resale of the Products, whether or not provided by the Seller at the Buyer's request.

## 13 SAFETY AND HEALTH INFORMATION AND COMMUNICATIONS

13.1 The Buyer acknowledges that it has consulted the Seller's documents, including information set forth on Seller's Material Safety Data Sheets regarding the Products and other technical bulletins and publications containing safety, health, handling and environmental hazard information concerning the Products and their properties, that it has read and it understands such information, and that it agrees to incorporate such information into its personnel safety programs.

13.2 The Buyer shall fully and adequately inform all its employees, contractors, agents and other third parties who may work with or become exposed to the Products, of any hazards associated with the Products, and of the proper storage, handling and use instructions and procedures for the Products, whether disclosed in such

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documents or in additional documents which are transmitted or otherwise provided to the Buyer.

- 13.3 If the Products are further processed, mixed or incorporated into another product, Buyer shall likewise disseminate appropriate health and safety information to all persons Buyer reasonably foresees may be exposed.

## 14 TERMINATION

In addition to any other remedies that the Seller may have, the Seller may terminate the Agreement with immediate effect upon written notice to the Buyer, if the Buyer: (i) fails to pay any amount when due under the Agreement and such failure continues for five (5) business days after the Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms and conditions of the Agreement, in whole or in part; (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iv) consummates a change of control (which for the purposes of this Agreement shall mean a transfer of all or substantially all of the assets of Buyer and/or transfer of more than 50% of the share capital of or interest in the Buyer and/or right to appoint 50% or more of the members of its board of directors or other similar controlling body and/or the transfer of power to direct or cause the direction of the management and policies of the Buyer, whether by contract or otherwise).

## 15 ASSIGNMENT

The Agreement shall be binding upon and inure to the benefit of the respective successors of the parties hereto, but it shall not be transferred or assigned by the Buyer without the prior written consent of the Seller. Any direct or indirect change in control of Buyer shall be deemed an assignment for the purpose of this Section 15 and accordingly shall be subject to the prior written consent of the Seller, which shall not be unreasonably withheld. The Seller shall have the right to assign the Agreement without the Buyer's consent, including the right to assign the receivables due to it from Buyer or any other third party, as the case may be, to a third party without any limitation.

## 16 WAIVER

Delay or failure by either party in exercising any right hereunder shall not constitute a waiver of that or any other right or subsequent right in the Agreement, except as otherwise specifically set forth herein.

## 17 SEVERABILITY

If any provision or part of a provision of the Agreement shall be, or be found by any authority, tribunal or court of competent jurisdiction to be, invalid or unenforceable, such provision shall be deemed excluded from this Agreement and shall not render invalid or unenforceability on the other provisions or parts of such provisions of the Agreement, all of which shall remain in full force and effect; provided, however, that in such event this Agreement shall be interpreted so as to give effect, to the greatest extent consistent with and permitted by applicable law, to the meaning and intention of the excluded provision.

## 18 SURVIVAL

The rights and obligations of the parties hereto will survive the termination, cancellation, completion or expiration of the Agreement to the extent that any performance is required under the Agreement after such termination, cancellation, completion or expiration.

## 19 CONFIDENTIAL INFORMATION, INFORMATION REGARDING USE OF PRODUCTS AND INTELLECTUAL PROPERTY

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller (or on its behalf), to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party, nor does this Section amend, waive or supersede the terms of any written confidentiality or similar agreement between Buyer and Seller.

Upon the Seller's request, the Buyer shall inform the Seller of its intended use of the Products to the extent necessary to allow Seller to comply with any applicable law.

Buyer shall not use the Seller's intellectual property with respect to the Products except in the normal course of using the Products according to this Agreement. The Buyer shall not copy, modify, decode, reverse engineer, decompile the Products, or copy, modify, translate, or create a derivative work of any of the Products and/or Product's documentation or collateral materials. Buyer shall not use any of Seller's trade names or trademarks without the advance, express written consent of Seller.

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## 20 CHOICE OF LANGUAGE; TRANSLATIONS AND ADDITIONAL TERMS

- 20.1 Translations of the General Conditions of Sale are available in select languages other than English at <http://www.icl-group.com/commercial-terms/> or upon request to Seller. In the event of conflict between the English version of these terms and a translation of these terms, the English version will govern. Annexes containing additional terms and conditions specific to certain Products or Seller may also be found at such website.

- 20.2 Solely with respect to an Agreement whereby the Buyer has committed to purchase a percentage of its requirements of a Product during the term specified in the Agreement, the Product grade, concentration and quality descriptions of the Product described therein are not material and are merely descriptive of the Buyer's then-current requirement (e.g., concentration, sizing, etc.) and grade that the Seller is to provide and the Buyer is required to purchase. The Buyer is not excused from performance under the Agreement if there is a change in its desired or required concentration, quality, specification or grade contracted for therein. In the event the Buyer's needs or desires for concentration, quality, specification or grade of the Products change, the Buyer shall so notify the Seller in writing, and the Buyer shall be obligated to purchase the contracted percentage of its requirements of the relevant Product at such changed concentration, quality, specification or grade, with the purchase price to be adjusted accordingly.

## 21 NOTICES

All notices, requests, claims, demands and other communications between the parties hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Agreement or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered (i) by personal delivery, (ii) by a nationally recognized next day courier service (with all fees pre-paid), (iii) by first class, registered or certified mail, postage prepaid, (iv) by facsimile (with confirmation of transmission), or (v) by electronic mail return (with confirmation of receipt requested). All notices shall be effective upon (i) receipt by the party to which notice is given, or (ii) on the seventh (7<sup>th</sup>) day following mailing, whichever occurs first.

## 22 GOVERNING LAW AND JURISDICTION

The Agreement shall be governed and construed in all respects in accordance with the laws of the jurisdiction of the Seller's principal place of business, without regard to the conflict of laws provisions thereof. The exclusive jurisdiction and venue in any legal proceeding between Seller and Buyer will be in the courts where the Seller's principal place of business or registered office is located. Notwithstanding the foregoing, the Seller may seek interim injunctive relief or preservation measures in any court of competent jurisdiction to prevent or minimize irreparable damage to the Seller. The rights and obligations of the parties under the Agreement shall not be governed by or construed in accordance with the provisions of the United Nations Convention on Contracts for the International Sale of Goods.