

GENERAL CONDITIONS OF SALE	
<p>1. Applicability / Conclusion of Contract</p> <p>1.1. The following terms and conditions of sale apply to all products and materials, as more particularly defined in the Specifications, as defined below, (hereinafter referred to as the "Goods") delivered by Imerys Graphite & Carbon (hereinafter referred to as the "Seller") to any party ordering any of Seller's Goods (hereinafter referred to as the "Buyer"), notwithstanding anything to the contrary in Buyer's general conditions of purchase or in any other document issued by Buyer. Conflicting and additional terms and conditions of any such documents shall be deemed deleted and not binding upon the Seller, except insofar as expressly agreed upon in writing by duly empowered representatives of Seller, either in the order confirmation or in any other written instrument.</p> <p>1.2. Any contract for the sale of Goods to the Buyer shall be validly entered into only when Seller, upon receipt of a purchase order from Buyer, confirms its acceptance in writing or by issuing an invoice. Seller hereby rejects in advance all terms and conditions contained in any of Buyer's documents relating to its purchase of Goods from Seller.</p> <p>2. Conditions of Supply and Inspection</p> <p>2.1. The quantity, price and terms and condition of the delivery shall be determined by the order confirmation issued by the Seller. Performances not covered thereby shall be charged separately.</p> <p>2.2. Weights, tare and tests fixed by Seller's shipping invoice shall be conclusive and binding upon the parties hereto as to all Goods shipped by Seller to Buyer.</p> <p>2.3. Buyer shall examine the conformity of the Goods with the Specifications within 10 (ten) business days after receipt.</p> <p>2.4. In the event of errors in weight, deviation of quality from Specifications, loss or damage to materials, claims against Seller are waived by Buyer unless made in writing within thirty (30) days after arrival of shipment at destination, being understood that in any event, all claims made after the Goods have been resold by the Buyer, or have undergone any processing or treatment in any form whatsoever shall be null and void. Claims concerning defects that could not be discovered within the above time limit despite accurate inspection of the Goods must be made in writing and received by Seller within ten (10) business days from discovery of the defects, and, in any event, within the warranty term hereunder. Failure of Buyer to give notice of any claim within the applicable time period specified above shall be deemed an absolute and unconditional waiver for such claim.</p> <p>3. Application</p> <p>The Buyer acknowledges that the conditions of use of the Goods supplied hereunder are beyond the control and knowledge of Seller. It is the sole responsibility of the Buyer to ensure that the intended application is suitable and appropriate, before acceptance and use.</p> <p>4. Price and Specifications</p> <p>4.1. Unless otherwise agreed upon in writing by Seller and Buyer, the prices are net ex-works Seller's premises (INCOTERMS 2010), inclusive of packaging. All incidental costs, including, but not limited to, the costs of freight, insurance, export, transit, import and other permits shall be charged to the Buyer. The Buyer shall also bear all types of taxes, duties, charges and customs duties.</p> <p>4.2. Unless expressly agreed upon in writing by duly empowered representatives of Seller, the Goods shall conform to Seller's standard specifications in effect on the date of shipment (herein referred to as the "Specifications").</p> <p>5. Terms of Payment</p> <p>5.1. Buyer's obligation of payment for the Goods delivered hereunder shall be fulfilled only insofar as the invoiced amount, without any deduction, is placed at the free disposal of Seller in Seller's bank account. Bank charges shall be for the account of the Buyer.</p> <p>5.2. Payment is due net thirty (30) days from the date of Seller's invoice, or within such other term which Seller may agree upon in writing. The said payment term shall be adhered to also in the case of a Force Majeure event, as defined under Article 12. Buyer has no right of set-off against amounts it owes to Seller.</p> <p>5.3. In the event that payment is not made in full within the permitted period, Seller will charge interest without express notice and without prejudice to the assertion of further damages for delay in payment, in particular exchange rate loss. Interest shall be equal to the lesser of 1.5% (one point five percent) per calendar month (or any portion thereof) on all overdue amounts or the maximum interest rate permitted by the Applicable Law, as defined hereinafter, from the due date thereof until paid, unless the Applicable Law provides for otherwise.</p> <p>5.4. In the event of late payment Seller is entitled to withhold further deliveries of Goods or to condition further deliveries upon the provision of securities acceptable to Seller, including advance payment. In addition, all claims of Seller under the business relationship become due immediately. All other rights of Seller are expressly reserved. In particular, Seller is, in the event of a default of Buyer, entitled to terminate with immediate effect any existing sale contract.</p> <p>5.5. In the event that the payments required herein must be collected by or through an attorney at law or through a collection agency, or in the event a bankruptcy proceeding is filed by or against Buyer, Buyer shall pay said reasonable fees and costs associated with such collection efforts, including reasonable attorneys' fees and disbursements, together with all attorneys' fees and disbursements incurred by Seller in connection with any matter arising in such bankruptcy proceeding, including without limitation, any matter relating to the assumption, assignment or rejection of the sale contract, relief from the automatic stay and/or adequate protection with respect to the sale contract, and/or any US Chapter 11 plan or similar plans in such proceeding and/or filing a proof of claim.</p> <p>6. Retention of Title</p> <p>Seller shall retain title to Goods delivered by it until they are paid for in full. Buyer shall be obliged at all times to co-operate in taking such measures as Seller deems to be necessary to protect the title of Seller and to inform Seller immediately of any change in domicile or address.</p> <p>7. Supply Period</p> <p>7.1. The supply period shall commence as soon as the contract is fully executed and all necessary governmental formalities, such as import and payment permissions, etc. are obtained.</p> <p>7.2. The supply period shall be extended commensurately if Seller is not given punctually the information which is required for the supply of the Goods or if it is altered later by the Buyer and a delay in supplying the Goods is caused thereby. The rights of Seller in respect of a delay caused by the Buyer shall not be affected by an extension of the supply period.</p> <p>7.3. The Buyer shall have no right to damages or to cancel the sale contract based on late delivery, according to the provision set forth under Article 7.2.</p> <p>7.4. Time is not of essence in the sale contemplated by the sale contract and the Seller shall be entitled to a reasonable period of grace in the event of any delay in delivery beyond the scheduled shipping date.</p> <p>8. Use and Risk</p> <p>Use and risk shall be transferred to the Buyer in accordance with the delivery terms (INCOTERMS 2010). If the dispatch is delayed or made impossible on the grounds of Buyer invoking Article 12, the Goods shall be stored at the Buyer's expense and risk.</p> <p>9. Delivery, Return Policy and Insurance</p> <p>9.1. Delivery shall be effected in the standard packaging of Seller at the cost and risk of the Buyer. The packaging shall be non-returnable.</p> <p>9.2. Deliveries hereunder are made ex works, Seller's premises, according to INCOTERMS 2010, unless otherwise agreed upon in writing by Seller and Buyer.</p> <p>9.3. In the event that Seller delivers Goods that are within the Specifications, or within such other specifications that Seller may agree upon in writing with Buyer, and Buyer nevertheless returns such Goods, then Buyer shall pay the freight charge to return said delivery to Seller and Seller may charge to Buyer a re-stocking fee of up to twenty percent (20%) of the invoice price of said delivery of Goods.</p> <p>9.4. Insurance against damage of whatsoever type shall be the responsibility of the Buyer, unless otherwise agreed upon in writing by Seller and Buyer.</p> <p>10. Limited Warranty, Damages and Remedy</p> <p>10.1. Seller warrants that (i) the Goods shall conform to the Specifications, or to such other specifications that Seller may agree upon in writing with Buyer, and (ii) Seller will convey to Buyer title to all Goods purchased and sold hereunder free and clear of all liens, claims and encumbrances except claims for the purchase price thereof in favor of Seller and any security interest therein in favor of Seller created to secure payment and performance by Buyer of its obligations hereunder.</p>	<p>10.2. THE FOREGOING WARRANTY IS EXCLUSIVE AND SELLER MAKES NO OTHER WRITTEN, ORAL, EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS. SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST INFRINGEMENT OF ANY THIRD PARTY RIGHTS, INCLUDING BUT NOT LIMITED TO INTELLECTUAL PROPERTY RIGHTS. REMEDIES FOR BREACH OF ANY WARRANTY SHALL BE LIMITED TO THOSE REMEDIES DESCRIBED BELOW.</p> <p>10.3. SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS AND/OR LOST PRODUCTION, WHETHER ARISING UNDER BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, INDEMNITY OR ANY OTHER THEORY OF LIABILITY. IN ANY EVENT, SELLER'S LIABILITY FOR ANY AND ALL CLAIMS, DAMAGES AND CAUSES OF ACTION ARISING OUT OF THE SALE, USE, STORAGE, DELIVERY OR NON-DELIVERY OF ANY GOOD, PERFORMANCE OF ANY SERVICES, OR BREACH OF ANY WARRANTY SHALL BE LIMITED TO THE PRICE (INCLUDING THIRD PARTY FREIGHT CHARGES IF PAID BY BUYER) PAID TO SELLER FOR SUCH GOOD.</p> <p>10.4. Buyer shall indemnify and defend Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense whatsoever (including but not limited to, attorneys' fees and disbursements) arising out of or related to (i) any breach by Buyer of any provision of these General Conditions of Sale, or (ii) any claims by third parties related to Buyer's resale, use or disposition of the Goods.</p> <p>10.5. In the event that any Good sold by Seller to Buyer does not conform to the provisions of the foregoing exclusive warranty or, if for any other reason Seller may be liable as a result of the sale, handling or use of any Good, the Buyer's exclusive remedy shall be and is expressly limited to the payment of the purchase price of the particular shipment of such Good (including third party freight charges, if paid by Buyer) or, at Seller's option, replacement of nonconforming Goods with conforming Goods. Any claim made under these General Conditions of Sale relating to any Good must be made within thirty (30) days after delivery.</p> <p>10.6. Replaced Goods according to Article 10.5. shall become the property of Seller.</p> <p>10.7. The warranty period shall commence with the dispatch of the Goods from Seller's premises and shall extend for 6 (six) months, or until the Goods are processed or altered by the Buyer or incorporated into Buyer's products, whichever occurs first.</p> <p>10.8. Defects that are not attributable to Seller are excluded from the warranty. Similarly, the warranty cannot be asserted, if the Buyer does not promptly take suitable measures in order to minimize the damage and enable Seller to remedy the defect.</p> <p>10.9. Seller provides no warranty for Goods delivered through subcontracted deliveries.</p> <p>10.10. As conditions of use of the Goods supplied hereunder are beyond the control of Seller, final determination as to the violation of any intellectual property right is the sole responsibility of Buyer. Seller assumes no liability or responsibility with respect to the same, and expressly disclaims any obligation for indemnification. Buyer shall indemnify, defend and hold harmless Seller from all claims, suits, demands, damages, liabilities, expenses (including, but not limited to, reasonable fees and disbursements of counsel and court costs), judgments, settlements and penalties arising from or relating to any actual or alleged infringement of any patent regarding a composition, process or application of Buyer that is not under control of Seller.</p> <p>10.11. In jurisdictions that limit the scope of or preclude limitations or exclusions of remedies or damages or of liability, such as liability for gross negligence or willful misconduct, or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.</p> <p>11. Partial Invalidation</p> <p>11.1. Any provision of these General Conditions of Sale that is totally or partially prohibited, unenforceable, or declared or found to be illegal, unenforceable, void or invalid in any jurisdiction shall, as to such jurisdiction, be ineffective only to such extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of these General Conditions of Sale or affecting the validity or enforceability of such provision in any other jurisdiction.</p> <p>11.2. An invalid provision shall be replaced by a provision that achieves, as much as possible, the purpose, sense and economic purpose of the invalid provision.</p> <p>12. Force Majeure</p> <p>12.1. Both Seller and Buyer shall be relieved of performance of their respective obligations hereunder when prevented by any cause beyond its reasonable control (other than financial or economic incapacity), such as, but not limited to, acts of God, acts of a public enemy, insurrections, riots, strikes, labor disputes, work stoppages, fires, explosions, floods, electric power failure, late or defective delivery or shortage of raw materials, semi-finished or finished products necessary to make the Goods, catastrophic breakdown of or damage to plants, mines, quarries, equipment or facilities, interruptions in or exigencies of transportation, embargoes, orders, actions or non-actions of civil or military authorities, or governmental requirements or restrictions, which prevent, in whole or in part, either party from performing its obligations hereunder (herein referred to as "Force Majeure").</p> <p>12.2. The party suffering such Force Majeure event shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period.</p> <p>12.3. Notwithstanding the foregoing, Buyer shall in any event be liable to Seller for the invoice price of all Goods shipped by Seller.</p> <p>13. Confidentiality and No Analysis</p> <p>13.1. Each of the Seller and the Buyer shall keep confidential, and shall not without the prior consent in writing of the other disclose to any third party, any technical or commercial information, including but not limited to sales volumes of Goods sold and purchased and the price thereof, which it has acquired from the other as a result of discussions, negotiations and other communications relating to the Goods, except as may be required by law or legal process.</p> <p>13.2. Buyer will not, without the prior written consent of Seller, (i) perform, either directly or through a third party, any reverse engineering of the Goods (or samples thereof), or (ii) file any patent, utility model or design application based upon any of the Goods or otherwise use the Goods directly or indirectly in context with any application for intellectual property rights.</p> <p>14. Miscellaneous</p> <p>14.1. These General Conditions of Sale may not be modified, amended, or supplemented except by a written instrument signed by duly empowered representatives of Seller. The English version of these General Conditions of Sale shall prevail over any translation.</p> <p>14.2. Except as expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person, entity or enterprise other than the parties hereto and their successors or permitted assigns, any rights, benefits or remedies of any kind or character whatsoever under or by reason of these General Conditions of Sale.</p> <p>14.3. Nothing contained herein shall be construed as granting or implying any license, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other proprietary right or interest owned by Seller.</p> <p>14.4. The failure of either party to enforce, in any one or more instances, performance of any of the terms, covenants or conditions of these General Conditions of Sale shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, covenant, or condition, and such failure shall in no way affect the validity of these General Conditions of Sale or the rights and obligations of the parties hereto. The parties acknowledge that a waiver of any term or provision hereof may only be given by a written instrument executed by Seller and Buyer.</p> <p>14.5. Buyer shall not assign its rights or delegate its performance or obligations hereunder without the prior written consent of Seller.</p> <p>15. Applicable Law and Jurisdiction</p> <p>15.1. Any and all purchases of Goods by Buyer from Seller shall be governed by, and construed and interpreted in accordance with, the internal laws of the place of the Seller's registered office (herein referred to as the "Applicable Law"). The UN Convention on Contracts for the International Sale of Goods of April 11, 1980, eventual subsequent amendments thereto and the Applicable Law providing its application, as well as any rule that would cause the application of the laws of any jurisdiction other than the Applicable Law, are hereby expressly excluded.</p> <p>15.2. Any disputes arising out of, or in relation with the purchase of Goods by Buyer from Seller shall be subject to the exclusive jurisdiction of the courts having jurisdiction at the place of Seller's registered office. Seller reserves however the right, at its option, to initiate court proceedings against the Buyer in the competent court of Buyer's registered office or in any other competent court.</p>