

of IMEXCO Minerals GmbH, D- 76877 Offenbach

Date: 30 April 2021

1. Scope

- 1.1 IMEXCO shall provide all deliveries and services only in accordance with the following terms and conditions of sale, delivery and payment (terms and conditions). The customer's general terms and conditions of purchase are only valid if IMEXCO has explicitly agreed to them. The execution of orders does not imply acceptance of the general terms and conditions of purchase of the purchaser. If the purchaser has accepted the terms and conditions of business after they have been made known to them in terms of content, they shall also apply to future contracts with them without the need for explicit reference to them in individual cases.
- 1.2 These terms and conditions shall only apply to customers who are entrepreneurs within the meaning of §§ 14, 310 BGB.

2. Offer, conclusion of contract

- 2.1 All information provided on websites, in brochures, advertising and offers without obligation constitute an invitation to the customer to place a binding order. Offers are binding if IMEXCO issues them in writing and does not declare any reservations in them. The acceptance of the order is effected by written order confirmation. Samples and specimens provided to the purchaser by IMEXCO or taken by the purchaser, as well as other information on the characteristics of merchandise or processed materials, must be complied with in a binding manner within the framework of agreed tolerances or standards for the delivery or execution of the services if they become part of the contract concluded with the purchaser.
- 2.2 Insofar as deliveries are not based on special specifications, they shall be made on the basis of average standard values and quality features from which deviations are possible to the extent customary in the trade. The customer is responsible for special purposes not covered by this. Compliance with legal and official regulations in another country shall only be owed if either IMEXCO declares this in advertising or in offers or if it is contractually agreed with the purchaser.
- 2.3 If a contract has been concluded, the purchaser is obliged to accept and pay for the agreed deliveries and services in the specified quantities within the agreed time or period in accordance with the statutory provisions.

3. Prices, payment, set-off

- 3.1 The agreed price is decisive in each case. IMEXCO is not obliged to maintain this price for future orders not yet placed, unless otherwise agreed with the purchaser. In the absence of any other agreement, the prices shown in the current price list applicable at the time of conclusion of the contract are to be paid. The prices are always "ex warehouse" at IMEXCO's place of business excluding value-added tax. Packaging, transport and transport insurance costs as well as all other ancillary costs are to be paid separately by the purchaser.
- 3.2 For deliveries or services that are to be delivered or provided within a period of more than four months after conclusion of the contract, IMEXCO has the right to increase the price in accordance with cost increases that have occurred in the meantime. Special agreements in the case of framework agreements are possible. If IMEXCO has agreed with purchasers on a price determination depending on certain price factors and indices, such as raw material prices, depending e.g. on delivery day prices, changes of these lead to corresponding price adjustments.
- 3.3 IMEXCO shall agree upon advance payment with the customer if no business relationship has existed with the customer so far, if deliveries are to be made abroad, if the customer has its place of business abroad or if there are other reasons for which IMEXCO requires securities. In other cases, the price owed is due for payment immediately after delivery in accordance with the contract. Payment must be made immediately after receipt of the invoice without deduction.
- 3.4 In the event of default of payment, IMEXCO is entitled to demand default interest in the amount of 9 percentage points above the base interest rate. IMEXCO reserves the right to claim higher interest for another legal reason and to claim further damages.
- 3.5 If a significant deterioration in the financial circumstances of the purchaser occurs at the time of delivery, IMEXCO is entitled to refuse the further execution of the contract until the purchaser makes the counter-performance or provides security for it. If the purchaser defaults on payments, all claims against them, regardless of whether they have already been invoiced or not, become due immediately.

3.6 The customer shall not be entitled to set off any claims other than those which are undisputed, acknowledged or have become res judicata.

4. Periods and dates

4.1 Delivery periods and dates are only binding if they have been explicitly agreed between IMEXCO and the purchaser. In the event of non-compliance, the customer shall grant IMEXCO a reasonable grace period for the performance of the contractual service owed. The grace period must be in writing.

4.2 Delivery by IMEXCO shall be deemed to have been made on time if the goods are handed over to the transport person at IMEXCO's place of business or warehouse.

4.3 Agreed delivery periods and dates shall be extended at least by the duration of the hindrance in cases of force majeure as well as other circumstances for which IMEXCO is not responsible, including other unforeseeable events which are beyond IMEXCO's control and which may be caused, for example, by the consequences of a pandemic. IMEXCO shall be released from liability in such cases due to non-compliance with agreed periods and deadlines. If the impediment lasts longer than six weeks without interruption, each contractual party shall have the right to withdraw from the contract with a written declaration without having to reimburse the other contractual party for expenses and damages incurred or still to be incurred as a result. We reserve the right to claim for expenses and damages incurred in the event that the other party to the contract is at fault.

4.4 If we comply with the purchaser's subsequent requests for changes or additions, this will lead to a reasonable extension of agreed dates and deadlines, and price changes will be agreed.

4.5 IMEXCO is entitled to partial deliveries and partial services which are reasonable for the purchaser. Early deliveries or services are permissible unless explicitly agreed otherwise.

4.6 In case of delay, IMEXCO is liable according to the statutory provisions, insofar as a delay in delivery is based on an intentional or grossly negligent breach of contract for which IMEXCO is responsible or the breach of an essential contractual obligation. The liability is limited to the reasonably foreseeable, typically occurring damage if an essential contractual obligation is only breached due to slight negligence.

4.7 If the customer is in default of acceptance or culpably violates other duties to cooperate, IMEXCO is entitled to demand compensation for the damage incurred in this respect, including any additional expenses. IMEXCO shall retain further rights according to the statutory provisions.

5. Delivery, dispatch, transfer of risk

Delivery shall be made at the discretion of IMEXCO "ex works" or "ex warehouse" at the risk of the customer. This also applies to deliveries which are agreed in writing as "carriage paid" in relation to a specific place of delivery or for which IMEXCO undertakes the dispatch. Irrespective of this, the risk of accidental loss or accidental deterioration of the delivery shall pass to the customer if the latter is in default of acceptance.

6. Retention of title, withdrawal

6.1 IMEXCO retains title to all deliveries until payment has been made in full.

6.2 The customer is entitled to resell the delivery owned by IMEXCO (reserved goods) in the ordinary course of business. They hereby assign to IMEXCO all claims arising from the resale up to the amount of the agreed price of the goods. If the goods subject to retention of title are resold together with other deliveries that do not belong to IMEXCO, the customer's claim against its customers is deemed to be assigned in the amount of the delivery price agreed between the customer and IMEXCO for the goods subject to retention of title.

6.3 Any processing or transformation of the reserved goods shall be carried out for IMEXCO as manufacturer within the meaning of § 950 BGB. The processed goods shall be deemed to be goods subject to retention of title. In the event of processing or combination of the reserved goods with other goods by the customer, IMEXCO shall be entitled to co-ownership of the new item in the ratio of the delivery price of the reserved goods to the delivery price of the other goods used.

6.4 Prior to the transfer of ownership, pledging, transfer by way of security, processing or transformation is not permitted without the explicit consent of IMEXCO. The purchaser is obliged to inform IMEXCO immediately if third parties make a claim to a delivery.

6.5 In the event of behaviour by the customer in breach of contract, in particular in the event of default of payment, IMEXCO is entitled to take back the delivery, in the event of default of payment if IMEXCO has withdrawn from the contract. After taking back the goods, IMEXCO is authorised to realise them. The realisation proceeds are to be credited against the liabilities of the purchaser – less reasonable realisation costs.

6.6 In the event that IMEXCO's ownership of the goods delivered with retention of title expires due to combination, the (co-)ownership of the purchaser in the uniform object shall pass to IMEXCO on a pro rata basis according to the invoice value of the goods subject to retention of title and shall be stored by the purchaser free of charge.

6.7 IMEXCO undertakes to release the securities at the request of the customer to the extent that their realisable value exceeds the claims to be secured by more than 10%.

7. Defect rights, liability for defects,

7.1 In the event of a commercial purchase, the purchaser must inspect the delivery in the ordinary course of business immediately after receipt in accordance with § 377 HGB and inform IMEXCO immediately in writing of any defects, shortages or incorrect deliveries found, together with the reasons for the complaint. Complaints about weight must be made in writing within 3 days of delivery. Hidden defects must be notified immediately after discovery. The purchaser must give IMEXCO the opportunity to determine the defect, e.g. submit defective goods in a testable and meaningful quantity or return samples taken on receipt of the goods.

7.2 The risk shall pass at the place of delivery or upon acceptance. If such a transfer is provided for by law, it shall pass to the purchaser. The purchaser's rights in respect of defects shall lapse if the purchaser fails to comply with prescribed storage conditions for the delivery and this causes the defectiveness.

7.3 The claims of the purchaser for duly notified defects shall be governed by the statutory provisions. According to these, the purchaser must grant IMEXCO the possibility of subsequent fulfilment by rectifying the defect or delivering defect-free goods within a reasonable period of grace. The setting of a period of grace by the purchaser must be in writing. If the supplementary performance fails, the customer shall have the right to reduce the remuneration or to withdraw from the contract. The customer's right to withdraw from the contract is excluded if the breach of duty is insignificant. This shall also apply if the delivery has already been processed and the customer can use it for the contractual purposes despite the defects. Claims for damages by the purchaser due to defects or a claim for reimbursement of expenses shall be governed by Clause 7.4.

7.4 IMEXCO shall be liable for claims for damages or reimbursement of expenses by the purchaser in accordance with the statutory provisions if these are based on intent or gross negligence by IMEXCO or if defects have been fraudulently concealed or guarantee commitments have not been complied with. In the event of a slightly negligent breach of material contractual obligations, liability shall be limited to the reasonably foreseeable damage typical for the contract. The statutory liability for personal injury as well as the mandatory liability under the Product Liability Act or other mandatory statutory liability rules shall remain unaffected.

7.5 A limitation period of twelve months from delivery shall apply to the purchaser's rights in respect of defects. In the event of fraudulent concealment of defects, non-compliance with guaranteed characteristics and in cases of liability due to intent or gross negligence, the respective statutory limitation period shall apply. If the delivery has been used for a building in accordance with its customary use and has caused its defectiveness, as well as in the case of claims for personal injury, the statutory limitation period shall also apply.

7.6 Statutory rights of recourse of the customer according to §§ 478, 479 BGB due to defects in the case of a purchase of consumer goods as well as the statutorily determined limitation period for rights of recourse in 445b BGB remain unaffected.

8. Other liability

8.1 Claims for damages or claims for reimbursement of expenses are excluded, irrespective of the legal grounds, unless liability is mandatory by law or a claim arises from the provisions in section 8.2.

8.2 In cases of liability due to breach of duty, irrespective of the legal grounds, and insofar as this does not result from Clause 4.6 and Clause 7.4, IMEXCO shall be liable for damages in accordance with the statutory provisions if these are based on intent and gross negligence on the part of IMEXCO. This shall also apply to personal injury. For damages caused by slight negligence, the liability is limited to the respective net order value, for slightly negligent breach of essential contractual obligations, the liability is limited to the reasonably foreseeable damage typical for the contract.

9. Place of performance, place of jurisdiction, applicable law

9.1 Place of performance for deliveries and payments shall be IMEXCO's place of business.

- 9.2 The place of jurisdiction for all legal disputes shall be the court having jurisdiction at IMEXCO's place of business. However, IMEXCO is also entitled to sue the purchaser at their general place of jurisdiction.
- 9.3 The law of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention; CISG) is excluded.