



Important information —
please read carefully!



General terms and conditions of business

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[Version: March 2015]

These terms and conditions of sale apply to the following companies:

Gebrüder Dorfner GmbH & Co. Kaolin- und Kristallquarzsand-Werke KG

Scharhof 1
D-92242 Hirschau
Germany

Asmanit-Dorfner GmbH Mineralaufbereitungs-GmbH & Co. KG

Engelhaming 12
A-4792 Münzkirchen
Austria

Glassblend GmbH

Engelhaming 12
A-4792 Münzkirchen
Austria

– Each hereinafter **„Seller“** –

and

Companies, legal persons under public law and special funds under public law

– Hereinafter **„Buyer“** –

1 Scope – General

1. These Terms and Conditions apply to contracts for the delivery of goods, in particular, raw materials such as kaolin or quartz sand and refined industrial mineral products in accordance with the contract entered into between the Seller and the Buyer. These Terms and Conditions shall hence also apply to all further business dealings with the Buyer, even where not expressly and separately stipulated. These Terms and Conditions shall form the contractual basis for long-term business dealings with the Buyer and, upon entering into the first contract,

will be acknowledged by Buyer for the entire duration of the business dealings, taking into account the following conditions.

2. Written confirmation by the Seller shall be required for any and all oral agreements agreed with a representative or employee that vary from the following conditions.

3. These Terms and Conditions shall be exclusively applicable. Any contradictory conditions are hereby expressly rejected. The Buyer waives its right to assert the applicability of its own terms and conditions, in particular its terms and

conditions of purchase. The latter will also not form part of the contract through the delivery and/or the other unreserved performance of the Seller.

2 Offer and Formation of Contract

1. Subject to the provision in Section 8.1, the Seller's quotations shall remain non-binding and subject to acknowledgement. In order to become legally effective, declarations of acceptance and all orders to this effect shall require acknowledgement in writing or text form by the Seller, which must take place within three weeks of receipt



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of the declaration of acceptance or order by the Buyer.

2. The Seller may accept offers by the Buyer within three weeks of receipt. Any supplements, amendments or oral agreements shall only become legally effective upon acknowledgement in writing or text form by the Seller.

3. The contract with the Buyer will arise subject to the correct and timely supply of goods to the Seller by its suppliers. This so-called availability disclaimer depends on a matching legal transaction having been entered into with the supplier, and the non-delivery not being attributable to the Seller. The Seller must promptly inform the Buyer of any non-delivery by its own supplier and, in the event that the Buyer withdraws from the contract, to promptly reimburse the Buyer's corresponding payments, if appropriate.

4. Dimensions, weights, drawings, figures or other technical data shall only be binding when the same have been expressly agreed in writing or text form. The Seller expressly states that any information contained in catalogues, brochures, newsletters, advertisements, figures and price lists on the weights, dimensions, holding capacities, colours and physical and chemical properties or performances are only estimates because the Seller's products are natural products that can be refined and/or mixed (also with synthetic products), and are subject to natural fluctuations and differences.

5. As a result of the criteria set forth under Section 2.4 above, a product description shall only be binding when this has been expressly agreed between the contractual parties. The Buyer shall be obliged to examine the respective product in terms of suitability for the required usage and to obtain information on tolerance ranges as well as possibilities for, and experience with regard to, applications.

6. The Seller shall retain ownership and copyright of quotations, figures, drawings and other documentation. The Buyer shall not disclose the same to third parties without the express written consent of the Seller. If no contract arises, such documents individually prepared for prospective buyers shall be returned without the requirement for request thereto and, in all other events, promptly upon request.

3 Timescale for Performance

1. The scope of the Seller's obligation to perform shall, in the first instance, be dependent on the Seller's written acknowledgement of the order.

2. The dates and periods stated by the Seller shall be estimated periods, unless otherwise expressly agreed in writing. This means that, after exceeding the stated non-binding date/period, the Buyer may instigate default through presenting the Seller with a written demand to deliver within a reasonable period of time.

3. Delivery and performance periods shall begin strictly upon conclusion of the contract. Where documents are required for the Seller to perform its obligations, or where agreement on the execution method, the precise product or clarification of the potential natural tolerances is required, or where the performance requires regulatory approval, the delivery period shall begin when the above impediments to performance, or similar, are no longer present.

4. Where, through circumstances that are not attributable to the Seller, the execution of delivery and performance obligations is impeded, delayed or temporarily rendered impossible, the Seller shall be entitled to extend the delivery/part-delivery or performance/part-performance by the duration of the impediment plus a reasonable lead time. Where, through circumstances that are not attributable to the Seller, the execution of delivery and performance obligations is rendered permanently impossible, the Seller shall be entitled to completely or partially withdraw from the contract. In particular, the Seller shall bear no fault for unsolicited official intrusions, unforeseeable interruptions in operations, industrial action, lockouts, work disturbances of a political or economic nature, unavoidable shortages of raw materials or consumables, transport delays caused by traffic disruptions and other unpreventable events suffered by the Seller, its suppliers or third party companies upon which the Seller



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relies in order to ensure its continued operation. Amendments to, and absence of, documents to be provided by the Buyer that are required to carry out the order shall also be deemed as such circumstances. The Seller undertakes to promptly inform the Buyer of the impossibility of delivery or performance and to promptly reimburse the Buyer for any payments not relating to any actual delivery or performance.

5. If the impediment (Section 3.4) exceeds a period of three months, upon setting a reasonable period of notice, the Buyer shall be entitled to withdraw from the unperformed portion of the contract.

6. If the Buyer is in default of acceptance or culpably breaches any obligations to cooperate, the Seller shall be entitled to demand compensation for any resulting damage it has incurred, including any additional costs. It shall reserve the right to assert any further claims or rights, in particular, in the event of default of acceptance pursuant to Section 373 of the HGB (German Commercial Code). Please refer to the obligation of the Buyer to cooperate with access and discharge possibilities (Section 4.5 of these Terms and Conditions).

4 Delivery and Transfer of Risk

1. The scope of the Seller's obligation to perform shall, in the first instance, be dependent on the Seller's written acknowledgement of the order.

2. If it is agreed that the supplied goods are to be despatched to a location stipulated by the Buyer (obligation to deliver), the risk of accidental loss and accidental deterioration shall pass to the Buyer as soon as the goods are handed over to the person performing transport, at the latest, however, upon leaving the place of storage.

3. If it is agreed that the Buyer will collect the goods (obligation to collect), by way of deviation from Section 4.2 above, the risk of accidental loss and accidental deterioration shall pass to the Buyer upon the goods being made available for collection by the Buyer and the Buyer being notified thereof (Ex Works as defined in Incoterms 2010). The above shall also apply in the event of part-deliveries. The Buyer or its carrier is responsible for ensuring the orderly loading and securing of the goods. If the Buyer is in default with acceptance or delays performance for any other reasons attributable to the Buyer, the risk shall pass to the Buyer as of the day upon which it was notified of the availability of the goods for collection.

4. The Seller shall purchase transport insurance upon the special request and expense of the Buyer.

5. If the delivery is to be performed by a carrier commissioned by the Seller (see Section 4.2 above), the Buyer must ensure access and discharge possibilities at the point of delivery for road trains with a total permissible weight of 40 tonnes. The Buyer must organise the access and discharge possibilities personally and/or relating to the

local conditions in such a manner that the obligations to protect the Seller are assured, that is, in particular, the transport vehicles are not damaged nor is delivery delayed due to the absence or insufficiency of access and discharge possibilities. Please refer to Section 3.6 of these Terms and Conditions.

5 Custom Orders

1. Custom articles and products cannot be returned, even in the case of claims under guarantee (see the Seller's right of refusal under Section 10.2 of these Terms and Conditions). It shall only be possible to cancel orders or custom orders upon the express, written consent of the Seller.

2. The Seller shall not be obliged to examine whether samples, drawings and other documents provided for the purpose of custom orders are subject to existing industrial property rights. This responsibility shall rest solely with the Buyer.

3. The Buyer shall be liable for any negative consequences and damage that the Seller incurs as a result of the Seller unwittingly infringing the industrial property rights of third parties through carrying out custom orders on behalf of the Buyer. In addition, please refer to Section 12.5 of these Terms and Conditions.

6 Weights, Moisture Content

1. The weight calculation shall be based on the weight of each ship-



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ment that is measured on the scales of the Seller or its supplier upon dispatch from the factory, irrespective of which means of transport is used to effect delivery. Proof of weight shall be provided through presentation of the weight ticket.

2. In the case of the shipment of wet goods, no claims may be asserted for weather condition-related differences in moisture content.

3. The goods shall be delivered gross for net. Deviations from the gross weight of up to 3% shall be deemed defect-free deliveries.

7 Call-off Orders or Block Orders

1. Call-off orders placed by the Buyer shall be subject to written agreement with the Seller. The Seller shall provide written confirmation of delivery dates.

2. In the absence of any expressly deviating agreement, the goods will be available for call-off for a maximum period of 26 weeks. Where possible, the call-offs and grades of the goods are to be submitted in approximately equal monthly quantities. Notification of call-offs is to be given at least four weeks in advance.

3. In the event that call-offs are not made on time, following the fruitless expiry of a reasonable grace period, the Seller may withdraw from the contract and demand compensation.

8 Prices

1. The prices stated in the Seller's offers shall only be binding for Seller within the stated period of validity.

2. Unless otherwise agreed, the prices shall generally be deemed Ex Works (principal office or warehouse of the Seller), carriage forward. They shall generally be subject to the respective value added tax and shall not include costs for transport, carriage or packing, nor insurance, customs duties or other additional levies (Ex Works as defined by Incoterms 2010).

3. Unless otherwise agreed, the Seller shall reserve the right to make corresponding adjustments to the agreed prices if, after conclusion of the contract, costs fall or rise, in particular as a result of increases in the costs of wages, materials and raw materials. There shall be no requirement for consent or approval by the Buyer hereto. The Seller will provide evidence of such increased costs if required to do so by the Buyer. Where fixed prices have been agreed, such adjustment shall only be possible when a period of more than six weeks lies between conclusion of contract and delivery, and the cost increases occur after the contract was concluded.

9 Payment, Set-off, Withholding

1. Unless otherwise agreed, the Seller's claims for payment shall fall immediately due after conclusion of the contract and shall be

payable without deduction thirty days after receipt of invoice or thirty days after delivery. The Seller shall be entitled to only perform the handover of the object of purchase concurrently against payment of the agreed purchase price.

2. The Seller shall be entitled to set off payments by the Buyer against the Buyer's earlier liabilities. If costs and interest have already been incurred, the Seller shall be entitled to set off the payment firstly against costs, then against interest, and finally against the principal performance.

3. Payments shall be made in cash or without charges/other costs to the business account of the Seller stated in the invoice. Payment shall only be deemed effected when the Seller is able to access the funds. Payment orders, cheques and bills of exchange will only be accepted as fulfilment where all transaction and discounting charges are borne by the Buyer.

4. Discounts that are granted as a result of the drawing down of a larger quantity (volume discount) shall be subject to the timely payment and complete drawdown of the goods. In the event of return shipments that the Seller has expressly authorised, but for which there is no legal obligation to accept returns (discretionary returns), the previously granted volume discounts shall not apply to the entire consignment from which the return shipment originates, and the Buyer will be obliged to effect a corresponding subsequent payment.



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5. Should the terms of payment not be met, or in the event of circumstances of which the Seller becomes aware after conclusion of the contract, and which, when applying banking standards, severely diminish the creditworthiness of the Buyer, and which the Seller deems will jeopardise the realisation of the Seller's claims, the Seller reserves the express right to declare the remaining debt as immediately due and payable. This shall also apply in the event of the acceptance of bills of exchange or cheques. Furthermore, the Seller shall be entitled to withdraw from previously concluded contracts with the Buyer if the Buyer does not effect advance payment or provide other collateral at the request and option of the Seller.

6. In the event of payment default, the Seller shall, without further warning, be entitled to demand the payment of default interest in the amount of 9 percentage points above the base interest rate pursuant to Section 247 of the BGB (German Civil Code), at least however, 10% of the outstanding amount. The Seller shall reserve the right to assert claims for greater compensation for default.

7. Payments that the Buyer makes as direct debits will be authorised when the Buyer does not revoke the debit entry within 10 working days.

8. The Buyer shall only have entitlement to set-off or withholding if its corresponding counter-claims are undisputed or bindingly determined by a court of law. The Buy-

er may assert its right to withhold when the Seller's asking price and the Buyer's counter-claim arise from the same contractual relationship. The Buyer consents to the offsetting of its claims and debts towards the Seller.

10 Warranties

1. The Buyer shall promptly inspect the goods upon delivery by the Seller and, if any defects are discovered, promptly notify the Seller thereto. In the absence of notification of the Seller by the Buyer, the goods shall be deemed accepted unless the defect is such that it was not immediately apparent upon inspection. If such a defect becomes apparent at a later point in time, notification must be promptly made following the discovery of the defect; otherwise, the goods will be considered accepted, even in consideration of this defect. Timely submission of the notification shall suffice to protect the Buyer's rights. The notification of defects shall not release the Buyer from its payment obligations. The Buyer shall bear the full burden of proof for all qualifying conditions, in particular for the defect itself, for the point in time of the defect, and for the timeliness of the notification of defects.

2. Should the goods delivered by the Seller contain material defects, the Buyer can, at its option, demand subsequent fulfilment in the form of a remedy of the defect or the delivery of defect-free goods. The Seller may reject the chosen form of subsequent fulfil-

ment if this is only possible through incurring disproportionate costs. If, for this reason, the Seller rejects the form of subsequent fulfilment chosen by the Buyer, the Buyer's claim shall be limited to the alternative form of subsequent fulfilment.

3. If the subsequent fulfilment is unsuccessful, the Buyer shall have a right to a reduction in the purchase price or to rescind the contract.

4. In the event of a justifiable claim for subsequent fulfilment, the Seller shall be obliged to bear the costs required for the purpose of subsequent fulfilment, in particular costs for transport, road tolls, work and materials. Notwithstanding any further claims of the Seller, in the event of unjustified notification of defects, the Buyer shall reimburse the Seller for the costs of the inspection and – where demanded – the remedy of the alleged defect.

5. The Seller shall neither make any guarantees nor accept a no-liability procurement risk and shall not accept liability for the quality of the goods to be procured.

6. The warranty rights of the Buyer shall become statute-barred after one year following delivery of the goods, save in the case of an event as set forth under Section 438(1)(2) or Section 379(1) of the BGB. The subsequent fulfilment shall not cause the limitation period to recommence. This warranty-specific reduction in the limitation period shall not apply in the case of death,



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physical injury or injury to health and for wilful and gross negligent breach of obligations.

11 Retention of Title

1. The Seller reserves the right to retain title to the delivered goods until payment in full of the purchase price and the fulfilment of all claims under the existing business relationship with the Buyer. In the case of a current open account with the Buyer, the total retained goods shall serve as security for the payment balance.

2. The retained goods may not be pledged, assigned as collateral or in any other manner encumbered with third-party rights.

3. The Buyer is entitled to resell the goods only within the course of normal business activities and on the condition that it only passes title to its customers when the same have paid the price in full. By entering into this contract with the Seller, the Buyer, by way of precaution, assigns to the Seller all of its future purchase price claims against its customers arising from such resale without the requirement for a separate declaration of assignment for individual cases of resale. The Seller accepts this assignment. In the case of an open account between the Buyer and its customers, the claim assigned by the Buyer in advance shall relate to the recognised balance and, in the event that the customer becomes insolvent, to the available causal account balance. At the same time, the Buyer shall as-

sume the obligation to inform the Seller upon request of the names of the third-party debtors and the amounts of the assigned receivables and to provide the information required for collecting the receivables. Until the Seller exercises its at any time permissible right to revocation, the Buyer shall be authorised to collect the tacitly assigned receivables. The Seller may revoke the rights of the Buyer under this Section 11.3 if the customer does not properly fulfil its contractual obligations towards the Seller, in particular when it is in default of payment.

4. In the event of processing/alteration of the retained goods or the combining/mixing of the same with another object, the Seller shall acquire immediate title to the new object. The same shall be deemed retained goods. If the retained goods are processed/ altered or combined/mixed with other objects that do not belong to the Seller, the Seller will acquire joint title to the new object in proportion to the value of the object of purchase (total invoice amount plus VAT) and the other processed/ altered or combined/mixed objects at the time of processing/alteration or combining/mixing. In such case, the advance assignment pursuant to Section 11.3 of these Terms and Conditions shall also apply in proportion to the value of the object of purchase (total invoice amount plus VAT) and the other processed/ altered or combined/mixed objects at the time of processing/alteration or combining/mixing, however, at maximum, in the amount of the total invoice

amount for the object of purchase (plus VAT) of the retained goods. If the goods are combined/mixed in such a manner that the object of the Buyer is to be considered the principal object, it shall be deemed agreed that the Buyer shall assign pro rata joint title to the Seller. The Buyer shall safeguard for the Seller the sole title or joint title that arises in this manner.

5. In accordance with the above provisions, to secure the Seller's claims against the Buyer, the Buyer also assigns the receivables due from a third party that arise as a result of the combination of the retained goods with real property.

6. If the surrendered objects of purchase are pledged by a third party, the Buyer shall be obliged to inform the bailiff of the retention of title. Furthermore, it shall be obliged to immediately notify the Seller by registered letter enclosing the report on assets seized and an affidavit of the contents stating that the pledged objects of purchase are identical to the incompletely paid objects of purchase transferred by the Seller subject to retention of title. Any necessary costs for intervention shall be borne by the Buyer.

7. The Buyer shall be obliged to treat the retained goods with care, in particular during transportation and storage, and to insure at its own expense these goods against customary risks such as fire, flood and theft. If, despite issuing a warning notice, the Buyer does not fulfil its insurance obligations, the Seller may purchase the insur-



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ance at the expense of the Buyer, disburse the insurance premiums and collect the costs as part of its claims under the contract. The Buyer now assigns all its claims against the insurance company or liable party as a matter of priority in the event of an insurance claim. The Seller hereby accepts this assignment.

8. If the Buyer's behaviour constitutes a breach of contract, in particular in the event of payment default or breach of obligations pursuant to Section 11 of the Terms and Conditions, the Seller shall be entitled to regain possession and, under exclusion of any and all rights of withholding, to oblige the Buyer to surrender the goods. If the retained goods are in the possession of a third party, the Buyer shall be obliged to inform the Seller of the name and location of the owner and to assign to the Seller all claims to surrender against third parties. Repossession of the retained goods shall not be deemed withdrawal from the corresponding contract. The Buyer shall bear all costs incurred through regaining possession.

9. If the value of the retained goods exceeds the total claim of the Seller by more than 20%, the Seller shall be obliged to release and transfer collateral back to the Buyer to this extent. The choice of releasable collateral shall rest with the Seller.

10. In the event of cessation of payment due to insolvency, at the latest upon the filing of an application

for the initiation of insolvency proceedings against the assets of the Buyer, the Buyer shall be obliged to immediately separate the still available retained goods that were handed over by the Seller as well as the assigned outstanding receivables, and to submit an accurate list thereof to the Seller.

12 Limitation of Liability; Release from Liability

1. The liability of the Seller for breaches of its contractual obligations and actions in tort shall be limited to intent and gross negligence. This shall not apply to claims for damages due to death, physical injury and damage to the health of the Buyer and claims due to breaches of material contractual duties. If the Seller is not culpable of intentional or gross negligent breaches of contract, it shall only be liable for foreseeable, typically occurring damage.

2. The Buyer may demand compensation in lieu of performance only when statutory prerequisites are met. The Buyer may not demand compensation of futile expenses as set forth under Section 284 of the BGB.

3. The Buyer may demand compensation due to delay (default) of the performance of the Seller only under the statutory prerequisites of Section 286 of the BGB. The Seller shall in no case be in default for as long as performance is not made as the result of a circumstance that is not attributable to it.

4. If the liability of the Seller is excluded or limited, this limitation shall also apply to the liability of the actions of the Seller's vicarious agents and persons whose services it draws on for the fulfilment of its duties.

5. Unless expressly agreed otherwise in writing, the Seller shall not accept any liability whatsoever for materials, order components, shipment advice, processing specifications and similar that the Buyer provides. The Seller shall not be obliged to examine them for conformity with legal standards within the meaning of the German Product Liability Act (Produkthaftungsgesetz), the Civil Code or other laws. In such cases, the Buyer shall bear unlimited liability and shall release and hold the Seller harmless from any and all claims of third parties.

13 Industrial Property Rights

1. The Seller shall retain exclusive rights to any and all drawings, drafts and plans, in particular patents, copyrights and inventors' rights. All sales literature, such as catalogues, sample books, price lists, etc., that are provided to the Buyer shall remain the property of the Seller and shall be returned at its request.

2. The Buyer may only use trademarks, trading names, other marks and industrial property rights of the manufacturer or the Seller subject to prior written consent and only in the furtherance of the Seller's interests.



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3. The Buyer shall be responsible for ensuring that the Seller's performance does not infringe any industrial property rights of third parties with regard to form, dimensions, colours, weights, etc. The Buyer will indemnify the Seller against any claims, including all legal costs and out-of-court costs, asserted by third parties as a result of the infringement of such industrial property rights.

Co. KG and Glassblend GmbH, the principal office is in Münzkirchen, Austria. The Seller shall, however, at its option, be entitled to instigate legal proceedings at the principal office of the Buyer.

3. The place of performance, to the extent legally possible, for any and all claims under this contract shall be exclusively the principal office (see 15.2) or the storage premises of the respective Seller.

14 Data Protection

The Seller shall be entitled to process and retain the personal data of the Buyer within the scope and limits of pertinent data protection provisions.

15 Governing Law, Jurisdiction and Place of Performance

1. These Terms and Conditions and all legal relationships between the Seller and the Buyer shall be governed by and construed in accordance with the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. The venue for any and all disputes arising under this contractual relationship shall exclusively be the competent court in whose territory the respective Seller has its principal office. Thus, the principal office of Gebrüder Dorfner GmbH & Co. Kaolin- und Kristallquarzsand-Werke KG is in Hirschau, Germany, and for Asmanit-Dorfner GmbH Mineralaufbereitungs-GmbH &