



## GENERAL TERMS AND CONDITIONS OF SALE AND/OR SERVICES

### 1. Definitions

- 1.1. "Contract" means an agreement concluded by the Parties in written form or an Order of the Customer accepted by Order Confirmation;
- 1.2. "Customer" means the legal entity or natural person which concludes a Contract for the purchase of Products and/or Services with the Supplier;
- 1.3. "Delivery" means the notification by the Supplier to the Customer that the Products are available for pickup at the place of delivery or that the Services or Work are completed;
- 1.4. "GTC" means these General Terms and Conditions of Sale and/or Services;
- 1.5. "Gross Negligence" is defined by the law governing the Contract or the GTC; if such law does not define the term, it means a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property or both;
- 1.6. "Order" means the written order of the Customer for the Supply of Products and/or Services which needs to be accepted by Order Confirmation;
- 1.7. "Order Confirmation" means the written confirmation of an Order by the Supplier;
- 1.8. "Party" means the Supplier or the Customer and "Parties" means both;
- 1.9. "Products" means refractory products or other goods, equipment and machinery as well as components for Work provided by the Supplier;
- 1.10. "Services" means the provision of work and or services performed by the Supplier except for consultancy and / or supervisory services, such as the provision of technical experts or supervisors;
- 1.11. "Supplier" means the company of RHI Magnesita company group stated in the Contract;
- 1.12. "Supply" means Products, Services and/or Work;
- 1.13. "Willful Misconduct" is defined by the law governing the Contract or the GTC; if such law does not define the term, it means an intentional disregard of good and prudent standards of performance or of the terms of the Contract or the GTC;
- 1.14. "Work" means the outcome/output of the Supplier's Services;
- 1.15. "Written Form" or "In Writing" means any documents signed by a Party including signed documents sent by e-mail.

### 2. Application

- 2.1. The GTC shall exclusively apply to and govern all quotations, Contracts, Orders, Order Confirmations, shipments or further documents between the Parties regarding the sale of Products, Services and/or Work by the Supplier to the Customer, regardless of whether the GTC are referred to. The GTC shall not apply to consultancy and / or supervisory services, such as the provision of technical experts or supervisors. For provision of technical experts and supervisors the General Terms and Conditions for Provision of Technical Experts (Supervisors and Machine Supervisors) as may be amended from time to time shall apply.
- 2.2. The Supplier reserves the right to amend the GTC at any given time. The GTC as amended shall apply from the time specified in the Contract or, if no time is specified in the Contract, from the time the GTC as amended are published on the RHI Magnesita company group website [www.rhimagnesita.com](http://www.rhimagnesita.com)
- 2.3. Unless explicitly stated otherwise in Writing, any quotation of the Supplier shall be non-binding. A Contract or any amendments thereto shall only be effective upon the Supplier's acceptance thereof In Writing. The Contract and the GTC constitute the entire agreement between the Customer and the Supplier and may only be amended by written agreement duly executed by the Parties, unless agreed upon otherwise. All further documents and conditions which the Customer purports to apply, especially the Customer's terms and conditions or other deviating, conflicting or supplementary terms are - if not accepted in writing by the Supplier - hereby expressly excluded and shall be without any effect. An omission to explicitly oppose such proposed conditions or terms shall not be deemed to be an acceptance by the Supplier.
- 2.4. In case of contradictions between the Contract, its appendices and the GTC the following order of priority shall apply: 1. the Contract, 2. the appendices to the Contract and 3. the GTC. In case of contradictions between an Order or an Order Confirmation, the Order Confirmation shall prevail.

### 3. Price

- 3.1. Unless stated otherwise, the prices specified in the Contract shall be net prices based on the Incoterm agreed upon in the Contract and shall not include any indirect taxes and levies, such as applicable value-added tax or goods and service tax or – unless provided otherwise under the agreed Incoterms - any additional costs such as freight and storage charges and insurance, customs duties and Services related to the Supply, or any overtime, meal allowances, bonus payments, shift premiums, travel and transport expenses or further products in relation to Services, if not agreed upon otherwise in the Contract. The Customer shall pay, in addition to any invoiced amounts, all applicable indirect taxes, such as value-added tax, goods and services tax and charges upon the production, sale, shipment, or use of the Supply, as well as any additional fees and expenses. In the event that the Supplier is required to pay any such costs in advance, the Customer shall immediately reimburse the Supplier at first request.



- 3.2. The prices shall be valid for the period stated in the Contract and shall be based on the costs at the time of signing of the respective documents by Supplier. The Supplier may at any time adjust the prices according to significant changes in its costs, including but not limited to costs of production, raw material, energy, labor or transport, general price list increases, exchange rate fluctuations, changes in law or applicable engineering standards, necessary suspensions or modifications of the Supply as well as any further changes beyond Supplier's sphere of influence. If the Supplier renders additional Services beyond the agreed scope, the Supplier is entitled to charge additional compensation, which shall be based on the rates agreed upon and include at least the costs incurred thereby.

#### **4. Payment**

- 4.1. Unless stated otherwise, the Customer shall pay all invoices by transfer to the Supplier's account as stated in the Contract no later than 30 (thirty) days after issuance of an invoice by the Supplier. Payments shall be deemed made when the funds are credited to the Supplier's account. The Customer shall make all payments without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. The Supplier may apply sums received from the Customer against any debt due under the Contract or under any other legal transaction, irrespective of any purported payment dedication by the Customer. Costs of payment transactions such as bank or bill charges and discounting costs shall be borne by the Customer. Payments shall be concluded in Canadian Dollars, if not agreed upon otherwise.
- 4.2. Within the limits as permitted by law, without prejudice to any other provision of the GTC or the Contract if the Customer fails to make any payment in accordance with clause 4.1 under the Contract or under any other legal transaction, or if in the discretion of the Supplier the creditworthiness of the Customer deteriorates, the Supplier may - without limiting any other right or remedy - cancel the Contract and demand the return of Products and Work, suspend any further Delivery or production/rendering of Products and Services for the Customer or effect these only against advance payment or security and demand payment for any Products or Services already provided. Furthermore, the Customer shall be liable to pay interest starting with the due date at the rate provided for under applicable law for default interest between entrepreneurs, and if not provided then at the rate of 16 % per annum until full payment is credited to the Supplier's account and shall reimburse the Supplier all costs incurred due to this default, including but not limited to currency losses, legal costs, dunning charges and fees of debt collection agencies. Discounts granted by the Supplier shall be subject to the punctual payment by the Customer.

#### **5. Retention of Title**

- 5.1. The Supplier retains all rights of ownership of the Products and the Work until such time as the Customer has performed or fulfilled all of its obligations under the Contract(s), including but not limited to the satisfaction of any claims to full payment of the purchase price plus interest or costs as well as all claims connected with shortcomings in compliance with a Contract by the Customer. Any claims of the Supplier in this regard may include any taxes, default interest, dunning or collection charges and advisor's fees. The Customer may not resell or pledge as collateral, or otherwise encumber such unpaid Product or Work. The Customer shall keep the Products and Work owned by Supplier separate from those of other owners, properly stored, insured and identified as the Supplier's property. The Customer shall inform its creditors about the Supplier's ownership, safeguard the Products and Work in this regard and notify the Supplier promptly of any impairments hereof. The Customer shall fulfill or support all necessary measures to ensure the Supplier's ownership rights, especially a registration of Supplier's ownership if mandatory according to applicable law. Until full payment, the Supplier may request the Customer to return the Products and Work at the Customer's sole risk and expense, unless otherwise provided by the applicable laws.
- 5.2. Without prejudice to any other provision of the GTC or the Contract if the Customer fails to fulfill its payment and/or other obligations under a Contract, the Supplier shall be entitled to recover the Products or request the return of the Products, without any prior notification. The Customer shall be obligated to lend the Supplier his full cooperation at Supplier's first request and to return the Products accordingly. The Customer must facilitate the recovery of the Products by the Supplier. All associated costs thereof shall be borne by the Customer.

#### **6. Delivery**

- 6.1. Unless agreed upon otherwise between the Parties, the delivery and the transfer of risk (risk of damage, loss or destruction) of the Supply shall be effected as per the agreed upon Incoterms in the Contract. Delivery and transfer of risk shall be deemed made when the Supplier informs the Customer that (i) the Products are available for pickup at the designated carrier or at the designated place of delivery as noted in the Contract or (ii) the Services or Work are completed.
- 6.2. If the Customer fails to accept Delivery or if Delivery is postponed at request of the Customer risk and liability for charges shall pass to the Customer at the time originally foreseen for delivery.
- 6.3. The Supplier reserves the right to deliver by partial or advance delivery or performance, which may be invoiced separately by the Supplier. The Supplier shall, if feasible, inform Customer thereof in advance.
- 6.4. The Supplier reserves the right to exceed or fall short of any delivery of Products up to 5%. The Customer shall accept and pay for any such delivery or excess quantity without any right to claim, objection or rejection. The invoice amount shall be adjusted accordingly.
- 6.5. Unless agreed upon otherwise between the Parties, the time of delivery or performance is not of the essence and all delivery dates stated in the Offer are non-binding. Delay in delivery or performance shall not relieve the Customer of its obligations of acceptance and payment upon delayed delivery or performance. Under no circumstances insofar as permitted by applicable law shall the Supplier, because of late delivery or non-delivery, be liable for any direct or indirect expenses, damages or consequential damages of the Customer or third parties nor shall the Customer be



entitled to terminate the Contract on the basis of any late delivery or non-delivery. Any change of the delivery schedule by the Customer shall be subject to the Supplier's written approval.

- 6.6. The Customer shall take over the Supply in accordance with 8.3 or 8.4 as applicable immediately at the time of Delivery, failing this the Supply shall be deemed to be accepted by the Customer and the Customer shall indemnify (without prejudice to any other of Supplier's rights) the Supplier for, from and against any resulting loss, damage, expense or additional costs, incurred by the Supplier hereof, such as, but not limited to, storage, demurrage and handling charges. The Supplier may store the Products or Work at the Customer's risk and expense or sell the Products or Work at the best price easily receivable, deduct its expenses therefrom and charge to the Customer any shortfall below the purchase price stated in the Contract. The Customer may refuse acceptance only in case of an evident wrong delivery.

## **7. Obligations of the Customer**

- 7.1. The Customer shall provide all necessary services, activities and assistance such as, but not limited to, the proper preparation of the construction site, all further required supplies, equipment, facilities and logistics, information, waste disposals, storage, necessary licenses, registrations, permits and approvals, safety regulations and any further Customer's obligations stated in the Contract at its own expense and risk with due skill, diligence and care and well in advance of and until Delivery or completion of the Supply.
- 7.2. Any failure on the Customer's part to fully comply with its obligations shall entitle the Supplier to arrange for substitute performance at the Customer's risk and expense. The Supplier may suspend its own delivery accordingly. The Customer shall be responsible for any and all costs incurred by the Supplier, directly or indirectly, as a result of or in connection with any delay or non-compliance by the Customer.
- 7.3. The Customer shall use the Supply exclusively for the explicitly or implicitly intended and disclosed purpose and shall strictly adhere to the Supplier's operating, loading and storage instructions (where applicable) and (to the extent such practice does not conflict with such instructions) to relevant trade practice. The Customer assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, use and misuse of the Supply supplied hereunder. The Customer shall in particular handle, transport, use, remove and dispose of the Products and Work in compliance with all applicable environmental, hazardous materials, health and safety laws unless agreed upon otherwise between the Parties.
- 7.4. The Customer shall indemnify and hold the Supplier harmless from and against all losses, damages, expenses, actions, advisor's fees, liabilities, penalties, fines, duties and claims each case arising directly or indirectly from the use of the Supply by the Customer in breach of clause 7.3. or any breach of the GTC, the Contract and/or applicable spare part, and/or failure by the Customer to comply with maintenance, operating or storage instructions and/or violation of applicable law or regulatory action, infringement of third-party intellectual property rights, caused by an act or omission of the Customer, its employees, agents or contractors.

## **8. Limitation of Warranty**

- 8.1. The Supplier warrants the Supply to be materially in accordance with the product specific tolerances stated in the specifications of the Contract at the time of Delivery. Reasonable deviations thereof shall be accepted by the Customer. To the extent allowed by applicable law, the warranty period shall start upon Delivery and shall be six months unless the specifications of the Supply specify a shorter warranty period or shelf life.
- 8.2. The Warranties are subject to: (i) no repairs, modifications or alterations being made to the Product other than by the Supplier or its authorized representatives; (ii) Customer handling, using, storing, installing, operating and maintaining the Products in compliance with any parameters or instructions in any specifications attached to or incorporated into the Contract, including but not limited to executing drying and heating-up in compliance with given instructions; (iii) compliance with all generally accepted industry standards; (iv) Customer discontinuing use of the Product after it has, or should have had, knowledge of any defect; (v) Customer providing prompt written notice of any warranty claims as specified in Clause 8.3 within the warranty period described below
- 8.3. The Customer shall immediately inspect the Supply upon Delivery and shall, within one week thereafter, give written notice if the Products do not conform to the Contract, specifying in detail the alleged defect. Failing this, the Supply shall be deemed to be accepted by the Customer and the Customer's respective warranty claims shall be excluded to the extent permitted by law. The Customer shall notify defects, which cannot be discovered at the time of careful inspection but which the Customer detects during the warranty period, within one week following detection thereof. Defective Supply may be returned by the Customer only with the Supplier's prior written consent.
- 8.4. In case of Supply involving commissioning and / or installation the Customer shall accept the Supply upon completion or on request of the Supplier, including any partial performance, within five calendar days through an acceptance report to be drawn up by both Parties. Failing this, the Supply shall be deemed accepted by the Customer. All warranty claims relating to the Supply must be recorded and particularly described in the acceptance report or shall be deemed to be waived by the Customer. By putting the Supply into operation, it shall be deemed to be accepted by the Customer, at the latest. Any costs and expenses related to the inspection or acceptance of the Supply shall be borne by the Customer.
- 8.5. If the Customer furnishes proof that the Supply was defective at the time of Delivery, the Supplier will at its own discretion repair, replace or repeat the defective Supply within a reasonable period. The Supplier may grant a price reduction or dissolution of the Contract, if a defect is provably significant and its removal is impossible or unreasonable. The Customer shall, at its own cost, ensure unrestricted access of the Supplier to the defective Supply and upon request provide all internal logs, metal analyzes, reports, etc., such as temperature records, charging, storage. If the Supplier subsequently discovers that the alleged deficiency was not subject to the Supplier's warranty, the Customer



shall compensate the Supplier for all the direct or indirect costs incurred thereby. Any warranty for remedied Supply shall be limited to the remainder of the original warranty period. Any substitute performance by the Customer or a third party shall be subject to the Supplier's prior written approval.

- 8.6. Any representations and information on/in the Supplier's website, sales brochures or any further documents, declarations or information of the Supplier's representatives shall only be binding if expressly stated in the Contract to be binding, failing this such information shall be deemed as non-binding statements and in no case deemed as implied or expressed warranties.
- 8.7. Any warranty rights and/or liability rights for normal wear and tear and minor deviations from the specifications as well as for all defects due to transport damage or events of force majeure shall be excluded to the extent permitted by law. Aside from the foregoing limited warranties, the Supplier makes no further warranty, express or implied, such as but not limited to the condition, merchantability, effectiveness or fitness for particular purpose, compliance with any sample or usage of trade.
- 8.8. The Customer's warranty claims against the Supplier shall become statute-barred, if not asserted in court within the warranty period.

#### **9. Limitation of Liability**

- 9.1. The Supplier shall be liable only for deliberate repudiatory breach, willful misconduct or blatant gross negligence, and to the extent permitted by applicable law all other liability of the Supplier is excluded.
- 9.2. In no event shall the Supplier, its employees, agents or contractors be liable to the Customer or any third party, in contract, tort or otherwise for loss of actual or anticipated profits, business, revenue, reputation, goodwill, time, use, production, interest, cost of capital, third party claims, financial loss, non-realized savings (in each case whether arising directly or indirectly) or for any special, incidental, indirect, exemplary, punitive or consequential damages relating to the Supply. The Supplier's liability shall be limited to the direct loss reasonably contemplated by the Parties at the date of the Contract as the natural result of the relevant breach of the Contract. The burden of proof lies in all cases with the Customer to the extent permitted by law. The aforementioned provisions shall not limit the Supplier's liability for personal injury or death, product liability, fraud or fraudulent misrepresentation or any other matter insofar as the liability may not be limited or excluded according to applicable law.
- 9.3. Save for personal injury or death or any other matter insofar as the liability may not be limited all Customer's claims against the Supplier shall expire, if not asserted in court within six months of Delivery.

#### **10. General Limitation**

- 10.1. Subject to the provisions of clause 9, any claims of the Customer against the Supplier, its employees, agents or contractors, arising out of or in connection with the Contract and its appendices or the GTC, whether based on tort, breach of contract, breach of warranty, strict liability, breach of statutory duty, misrepresentation, negligence or other act, default or omission (except for personal injury) shall, to the extent permitted by applicable law, be limited to the (pro rata) price of the Supply that gave rise to the claim in question or to a maximum amount of 500.000 dollars Canadian, (whichever amount is lower).
- 10.2. All rights of the Customer shall be forfeited if the Customer damages, alters, changes or repairs, on its own or through any third party, the Supply or fails to fulfill applicable spare part, maintenance, operating or storage instructions or any relevant usage of trade.
- 10.3. If the Supplier provides personnel for the supervision of the assembly, commissioning or installation by the Customer, the Supplier shall only be responsible for the selection of its suitable personnel. Liability and warranty of the Supplier for any representations, advice and assistance given in connection with the Contract, shall be excluded to the extent permitted by law, unless and to the extent that the Supplier made such representations, advice and assistance for a specific fee under a separate written contract with the Customer. None of Supplier's employees are responsible for the maintenance, or final decisions relating to the operation of Customer's production equipment, which is the exclusive responsibility of Customer. The final decision regarding operation of Customer's production equipment shall be the sole responsibility of Customer.
- 10.4. The Supplier is not obliged to review, verify or examine any planning and/or design documents or other information provided by the Customer. If these documents or information are incorrect, the Customer shall bear the liability for all resulting damages and shall indemnify the Supplier from and against any and all direct and indirect costs, losses and damages arising therefrom. If planning and design documents provided by the Supplier against payment are incorrect, the Supplier shall only be held to correct these documents and shall not be liable in any way for any loss resulting from such document being incorrect.
- 10.5. Any further warranty and compensation claims by the Customer on whatever legal grounds which are not stated in the aforementioned clauses shall be excluded to the extent permitted by law.

#### **11. Termination**

- 11.1. The Supplier may terminate the Contract or any part thereof at any time without giving reason and without liability by giving the Customer written notice of not less than one month. Furthermore, the Supplier may terminate or suspend all or any part of the Contract by written notice with immediate effect, if performance is impossible or unreasonable as determined by the Supplier in its sole discretion, if the Customer is in material breach of any of its obligations under such Contract or the GTC and such failure (if capable of remedy) is not cured within ten days after delivery of such written request, if insolvency or bankruptcy proceedings are initiated against the Customer or if the financial solvency of the Customer deteriorates substantially.



11.2. In case of a termination of the Contract for whatever reason the Customer shall immediately pay the price for any delivery, performance or production (or part thereof) effected prior to the termination or return the Products or Work at the Supplier's request. In the event of rescission, the Supplier may exercise all rights and remedies available hereunder and under law. The Customer shall reimburse the Supplier for any damage, loss and/or costs resulting thereof.

11.3. All clauses in the Contract or the GTC which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding any termination of the Contract.

## 12. Intellectual Property

The Customer acknowledges and agrees the Supplier's exclusive right, title, and interest in and to the Supplier's intellectual property relating to the Supply, such as but not limited to patents, licenses, copyrights, database rights, moral rights, design rights, registered designs, know-how, drawings, calculations, improvements, instructions, trademarks and trade secrets, written or not, ("Supplier's Intellectual Property") and, to the extent permitted by applicable law will not contest or impair the Supplier's right, title, and interest, to the extent permitted by applicable law. The Customer shall use Supplier's Intellectual Property only within the scope and for the purpose of the Contract and (except to the extent permitted by applicable law) must not make any reproductions, changes, additions, improvements, alterations, analysis, reverse engineering or modifications of the Supplier's intellectual property or disclose such intellectual property to any third parties.

## 13. Force Majeure

The Supplier shall not be liable for any delay in performance or delivery due to events of force majeure such as but not limited to acts of God, war, embargo and sanctions applicable to the company group of Supplier, national emergency, insurrection or riot, terrorism, piracy, fire, flood, storms or other natural disaster, theft, shortage of (raw) material, labor or energy, breakdown (of machinery), misfire, lack of means of or delays in transportation, regulatory action, difficulties with or shortage of utility supply including but not limited to supply of power, gas or water, telecommunications network failure or delay of a relevant authority to grant any required licenses or permits, changes in law, prohibitions or measures on the part of any authority, default of suppliers and subcontractors, strikes and lock-outs, infectious diseases, epidemics, travel restrictions or travel warnings, as well as any events beyond the Supplier's sphere of influence and all events that make delivery impossible or unreasonably difficult. The Supplier may suspend delivery or performance for the duration of the event of force majeure and a reasonable preparation time, provided that the Supplier has notified the Customer within a reasonable period in writing of such delay. The Supplier shall be entitled to terminate the Contract in full or in part without liability if a force majeure event persists for more than three months. Any delay in Delivery due to an event of force majeure shall not affect or diminish the liability of the Customer to fulfill its obligations.

## 14. Jurisdiction/Arbitration

14.1. The place of jurisdiction for all disputes or claims arising out of or in connection with the Contract or the GTC shall be in the provincial or federal courts located in Toronto, Ontario. Customer explicitly assents to venue in courts of Toronto, Ontario, and Customer waives any defenses to venue including, but not limited to, *forum nonconveniens*.

## 15. Governing Law

If not explicitly otherwise agreed in writing within a specific Contract, the GTC and all Contracts shall be governed and construed in accordance with the laws of the Province of Ontario. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

## 16. Severability

If a provision of the Contract and/or the GTC should be or becomes invalid or unenforceable or illegal, that provision shall be deemed to be deleted and, the validity of the other provisions of the Contract and/or the GTC shall remain unaffected and in full force. The invalid provision shall be replaced, and the gap be filled by a legally valid arrangement which corresponds as closely as possible to the intention of the Parties or what would have been the intention of the Parties according to the aim and purpose of the Contract and/or the GTC if they had recognized the gap.

## 17. Confidentiality

Each Party shall keep any information (oral or written) provided or disclosed by or on behalf of the other Party confidential, use such information only for the purpose of the Contract and shall refrain from disclosing such information to any third party other than its employees and sub-contractors who need to know such information for the purposes of performing its obligations under the Contract (and its appendices) and the GTC without the other Party's consent. This clause shall not apply to information which, at the time of disclosure, is or subsequently becomes available to the public (other than as a breach of the receiving Party's obligation under this clause), which at the time of disclosure was already in the possession or subsequently comes legally into the possession of the receiving Party or which was independently developed by the receiving Party. Each Party shall be entitled to disclose such information to the extent it is required to do so, in order to comply with an applicable legal requirement, court order, ruling of a public authority or stock exchange regulation. To the extent Supplier and Customer have executed a Non-Disclosure Agreement ("NDA") the terms of the NDA shall take precedence should there be conflict between this Section 17 and the NDA.

## 18. Data Protection

The Customer shall at all times comply with the applicable national and international laws and regulations regarding the protection of (personal) data, including, but not limited to, the European General Data Protection Regulation (Regulation (EU) 2016/679). The Parties are obliged to enter into further data protection agreements such as data processing agreements, if necessary.



## **19. Compliance**

- 19.1. The Customer shall, at its sole cost and expense, comply with all laws, ordinances, orders, rules and regulations related to the Customer's use or resale of the Supply, including but not limited to any laws and regulations in respect of export control, dual use, embargoes and/or sanctions, and shall at its own cost obtain any necessary permits and licenses and furnish the Supplier on demand with any required information in respect thereof. The Customer shall comply with the RHI Magnesita Code of Conduct available at [www.rhimagnesita.com](http://www.rhimagnesita.com).
- 19.2. The Contract shall be subject to the condition that performance is not impeded by national or international regulations such as export control and dual use regulations, sanctions or embargoes or that the required licenses or permits are obtained from the respective authorities in due time. Any respective claims of the Customer shall be excluded to the extent permitted by law.

## **20. Hardship Clause**

Without prejudice to clauses 3.2 and 13, the Parties shall negotiate in good faith modifications to the Contract, if the performance of the Contract becomes excessively onerous for the Supplier due to an event beyond the Supplier's reasonable control such as major changes in production, raw material, energy, labor or transport costs, general price list increases, exchange rate fluctuations, changes in law or applicable engineering standards, necessary suspensions or modifications of the Supply as well as any further changes beyond Supplier's sphere of influence. If an agreement concerning such modification is not achieved within four weeks after the Supplier has notified the Customer in writing that it wishes to modify the Contract (or any appendix) pursuant to this clause 20, the Supplier may terminate the Contract with immediate effect.

## **21. Recycling**

- 21.1. The Supplier has the right, but not the obligation, to acquire, collect and reuse ("Recycle") the used Products ("Used Products") which were originally part of the lining at Customer's site, after they have been demolished. The Supplier shall inform the Customer within due time, if it wants to exercise its right to Recycle.
- 21.2. If the Supplier exercises its right to Recycle and upon Customer's confirmation of its interest in disposing of the Used Products, the Customer shall (i) inform the Supplier within due time of the quality and conditions of the Used Products, (ii) enable the Supplier to enter the premises of the Customer to inspect the Used Products ("Inspection"), even after the end of the term of the Contract and (iii) enable the Supplier to take samples for chemical analysis of the Used Products. Until the Used Products are picked up from the Supplier, the Customer is responsible for the safe keeping of the Used Products and shall not use them for any purpose that could interfere with the right to Recycle of the Supplier.
- 21.3. The Parties may enter into a separate agreement to govern their respective obligations in connection with the exercise of the right to Recycle set forth herein.

## **22. Miscellaneous**

- 22.1. The Customer may not assign, sub-license or transfer in any way any of its rights, liabilities or obligations under any Contract or any part thereof without the prior written consent of the Supplier. The Supplier may assign, sub-license, sub-contract, novate or otherwise transfer any or all of its rights, liabilities and/or obligations under any the Contract or any part thereof to any third party and may deliver Goods or perform Services through any third parties.
- 22.2. A failure, neglect or delay of the Supplier to exercise or to enforce any of the rights under the Contract or the GTC shall not prejudice or restrict its rights, and no waiver of any right or of any breach of any contractual term shall be deemed to be a waiver of any other right or other breach. The rights and remedies provided by any Contract (and appendix) and the GTC are cumulative and (except as provided herein) are in addition to and not exclusive of any right or remedy provided by law.
- 22.3. Nothing in the Contract or the GTC shall confer on any third party any right to enforce any term of the Contract or the GTC.
- 22.4. If the Customer is not the end-user of the Supply, the Customer shall impose the provisions stated herein on the respective end user, failing this, the Customer shall defend, indemnify and hold harmless the Supplier against any action, liability, cost, loss or expense resulting therefrom.
- 22.5. The Supplier reserves the right to amend or delete any Supply or specification at any time without prior notice, unless already agreed upon in the Contract.
- 22.6. In the GTC, any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other genders.
- 22.7. Nothing in this Agreement shall be construed as constituting or evidencing any partnership or joint venture of any kind between the Parties.

## **23. Communication**

Any essential notice or communication required or permitted by the Contract or the GTC must be made in writing and delivered by personal delivery, registered mail, qualified courier or fax, in each case addressed to the other Party respectively the contact person defined in the Contract. Notice is deemed received when actually received by the other Party as evidenced by a delivery receipt or similar document.