General Terms of Business
Hosokawa Micron Powders GmbH

1. Scope

1.1 All our offers and processing orders are based on these General Terms of Business (hereinafter referred to as TOB). We accept orders solely on the basis of the conditions stipulated in these TOB. Unless otherwise expressly agreed upon, we shall not recognise any General Terms and Conditions of the customer which wholly or partially deviate from our TOB. Our TOB shall also exclusively apply in the event that we execute a toll processing order for the customer without reservation while being cognizant of the fact that the General Terms and Conditions of Business of the customer are contrary to or deviate from our TOB.

1.2 Our TOB shall also apply to all future business transactions with the customer.

1.3 Transactions shall be concluded on the basis of these TOB as well as our written quotations and order confirmations. All agreements made for the purpose of executing this contract shall be stipulated in the same in writing. There are no verbal ancillary agreements.

2. Quotations and notification requirements

2.1 The customer is obligated to indicate the properties of the material to be processed by means of an up-to-date and complete safety data sheet drawn up to conform with the requirements laid down in Directive 91/155/EEC or from 1 June 2007 onwards, in the REACH Directive (EC) No. 1907/2006. Any damage caused by contamination of the material supplied by the customer is for the customer's account.

2.2 We reserve proprietary rights and copyrights on any documentation either prepared or provided by us. This applies especially to such written documents which are marked "confidential". Prior to passing on any such documents to third parties, the customer requires our express written consent. Upon request, the documentation shall be returned to us free of charge.

2.3 Insofar as nothing to the contrary is expressly agreed, we shall submit initial quotations free of charge. Additional quotations shall only be free of charge provided that a binding order is placed as a result.

3. Processing and delivery deadlines

3.1 The observance of agreed processing deadlines presupposes the prompt receipt of all the documents, data, permits, certificates, quotas allocations and releases to be furnished by the customer, as well as receipt of the agreed advance payment. Should these prerequisites not be promptly and duly fulfilled, delivery deadlines shall be extended by a reasonable period of time. This shall not apply in the event that we are responsible for the delay.

3.2 Should processing be delayed by circumstances for which we are not responsible, the corresponding processing deadline shall be extended by the duration of the hindrance in question. This applies particularly to operational stoppages for which we or our suppliers and subcontractors are not responsible such as strike, lock-out, or incidences of government intervention beyond our control, fire damage, frost damage as well as force majeure and material flaws in accordance with Section 2.1. Should a binding processing or delivery deadline be delayed by such a hindrance for more than three months and should it not be possible to foresee the processing or delivery problem in question being rectified within a period of an additional four weeks, both contracting parties are entitled to withdraw from the contract. However, we shall not be responsible under any circumstances for any delivery delays brought about by subsequent requests for alterations by the customer.

3.3 Processing and delivery deadlines commence upon the dispatch of our confirmation of order, albeit not before the documents stipulated in Section 3.1 have been received. A delivery deadline is deemed met in the event of a delivery item having left our factory by expiry of the same or the customer having received notification of dispatch or delivery readiness.

3.4 This contract does not affect the property rights of the material to be processed. The delivery, storage and processing of the material on our premises is at the risk and expense of the customer. The corresponding risks are to be covered by the customer at his cost. We are entitled to demand proof of said coverage. The same applies to material transport. If transport of the material is arranged by the customer, he is the consignor as defined in §412, Section 1 of the German Commercial Code and is responsible for the safe loading of the material in preparation of carriage in accordance with the prevailing laws and the generally accepted rules of technology, and engages to furthermore commit the freight forwarder and other third parties assigned by him to the same.

3.5 In the event of a delay, the customer shall set us in writing a reasonable period of additional time of at least four weeks.

3.6 Should the customer fail to accept a delivery item at due date, the delivery item shall be stored on our factory premises or at another suitable location, for which the locally standard and appropriate storage costs shall be invoiced. Four weeks after making a corresponding request to the customer, we are entitled without prejudice to other provisions to sell the delivery item at our own discretion.

3.7 We are entitled to render partial deliveries and partial performance at any time.

4. Prices

4.1 Unless otherwise stipulated, we shall be bound by the prices stated in our quotations for thirty days from date of the same.

4.2 The prices stated in our confirmation of order plus the statutory value-added tax are authoritative.

4.3 Ancillary services which are not contractually agreed but necessary will be invoiced separately.

4.4 Unless otherwise expressly agreed, all prices are net ex-works or ex-warehouse prices, and exclude packaging, loading costs, freight charges, customs, insurance, any and all charges, customs duties or any other charges in connection with export from the Federal Republic of Germany and import into the country of destination.

4.5 Unless the packaging is provided by the customer, it shall be invoiced at standard market prices. Unless otherwise agreed, no packaging material shall be accepted back. Should we take the material back, the customer shall bear the costs.

4.6 The agreed prices are based on the labour, material and energy costs that prevail at the time of contract conclusion. Should such costs change between conclusion and execution of the contract, we are entitled to invoice a price which has been proportionately modified within the framework of the percentage of such costs which are accounted for by the agreed price. Such entitlement shall not apply in the event that we are negligent in giving consideration to the possibility of such costs changing when calculating the price.

4.7 The same shall apply in the event that, as an exception, we contractually assume responsibility for the payment of freight charges, customs duties or any other charges, and such charges change by the delivery date.

5. Payments

5.1 Unless otherwise agreed, payment is due immediately upon receipt of the invoice. Unless otherwise expressly agreed, the invoice is made out as soon as the processing is complete and the material is ready for dispatch to either the customer or to a third party named by the customer.

5.2 In the event of all or part of a processing order being delayed at the request of the customer, payment shall become due in full – or pro rata in the case of a partial delay to processing – immediately upon completion of the processing and receipt of the invoice by the customer.

5.3 In the event of the customer defaulting on payment, we are, from the point of time in question onwards, entitled to charge interest to the amount of the interest rate which is calculated by the commercial banks for outstanding overdrafts, albeit at least to the amount of the statutory interest rate. Should we be in a position to prove that the delay in payment resulted in higher costs, we are entitled to assert a claim to a correspondingly higher amount. On the other hand, the customer is entitled to demonstrate to us that no or a considerably lower level of damage occurred as a result of delayed payment.

5.4 Payment shall not be deemed effected until the amount in question is at our disposal. Payments by cheque are only accepted conditionally and are not deemed effected until the cheque in question has been credited to our account.
In the event that following contract conclusion, we should become cognizant of any circumstances which give rise to justified doubts of the solvency and creditworthiness of the customer on maturity, we are, under consideration of the realisable value of any receivables which have already been assigned as security or any ownership by way of security which has been acquired, entitled to make further processing of the order and delivery in question contingent upon the provision of adequate security. The customer shall be set a reasonable deadline in writing in advance for the provision of such security. In the event of failure to furnish said security within the set deadline or in the event of the customer defaulting on a payment obligation *vis-à-vis* ourselves, we shall be entitled to call in all outstanding – including deferred – receivables from the customer with immediate effect. Insofar as we have accepted any cheques or bills of exchange which are not yet due, we can in such cases request immediate payment against the return of said bills of exchange or cheques.

5.5 The customer may only make use of counterclaims which have been established on a legally binding basis or are undisputed or are pending judgment to offset against our receivables. This shall apply *mutatis mutandis* to the assertion of a right of retention or a right to withhold payment. Under these conditions, retention on the grounds that a notice of defect has been served shall only be permissible in reasonable proportion to the defect which has occurred.

6. Claims for defects

6.1 The customer is charged with inspecting the goods immediately upon receipt for any defects. The customer shall report in writing deliveries which are wholly or partially defective or which do not correspond to the order without delay, albeit no later than one (1) week following

receipt of the delivery item in question, insofar as the defects were ascertainable during the careful inspection necessitated by the type of goods concerned. Any other defects shall be reported immediately following discovery. For technical reasons, a material loss of up to 3% in weight is possible and does not represent a defect. The return of a specific amount of end product is only a contractual obligation if the amount delivered is evidenced in writing by the customer at the time of delivery and countersigned by ourselves.

6.2 Insofar as we are responsible for a defect to a delivery item, we shall at our discretion be entitled to rectify such defect or to withdraw from the contract.

6.3 In the event of our defaulting on the rectification of a defect, the customer shall be required to allot us once only a reasonable period of additional time of at least four weeks. Following expiry of said period or upon the failure to rectify a defect, the customer shall, as he sees fit, be entitled to withdraw from the contract or demand a reduction in the purchase price.

6.4 The period of limitation regarding claims for damages brought by the customer on the grounds of defects is twelve months following the passage of risks.

6.5 Our product description has exclusive authority with regard to the quality of the delivery item. Public statements, recommendations or advertising do not constitute contractual quality specifications of the delivery item.

6.6 Warranties in the sense of the law do not exist.

7. Claims for compensation

7.1 Claims for compensation filed by the customer – including those of a non-contractual nature – shall be excluded in the event of breaches of obligations caused by ordinary negligence on our part or on the part of our legal representatives and agents. This shall not apply in the event of a minor breach of a fundamental contractual obligation, i.e. an obligation the fulfilment of which is essential for proper execution of the contract and the compliance of which the customer can rely upon at all times. However, in this case, liability shall be restricted to the foreseeable incidence of damage as is typical of the contract involved.

7.2 It should also be noted that otherwise, we shall only be liable in the event of intention and gross negligence on our part or gross negligence on the part of our executive employees and intention and gross negligence on the part of our agents.

7.3 Our liability is limited to the type of typical damage that can be foreseen at the time of contract conclusion. Except for cases of intent, the reimbursement of pure economic loss, e.g. of production stoppages or lost profits, shall be limited by the general principles of good faith, for example, in cases of disproportion to a sum between the purchase price and the extent of the damages.

7.4 We accept no liability for contamination, tramp inclusions and such like in the material delivered to us by the customer, nor for any deviations regarding the predefined specific material values. In the event that the material processed by us in accordance with the contract proves to be unusable for the customer for reasons other than those for which we are responsible, the customer remains bound to the contract.

7.5 By the same token, no liability is accepted for damage caused by the rectification of defects carried out without our approval.

7.6 Insofar as liability for damages *vis-à-vis* ourselves is excluded or restricted, this shall also apply with regard to the personal liability for damages on the part of our white- and blue-collar staff members, associates, representatives and agents.

7.7 This shall have no effect on any claims pursuant to the Product Liability Act or mandatory legal provisions.

8 Retention of title

8.1 Delivery items (reserved goods) remain our property until such time as all the receivables (including all receivable balances from current accounts) to which we are currently entitled, or to which we shall be entitled in the future, from the customer and/or his affiliates on any legal grounds whatsoever have been furnished in full.

8.2 The customer is obligated to hold the reserved goods in safekeeping and to maintain and repair the same for us at his own expense and, within the framework which is required of a prudent businessman, adequately insure such goods at reinstatement value at his own expense against theft, breakage and fire and water damage and, upon request, furnish evidence of such insurance. He shall assign his claims arising from such insurance policies to the vendor in advance.

8.3 In the event of a breach of contract on the part of the customer, particularly payment default, we shall be entitled to retrieve a delivered item without granting a period of grace or, if necessary, demand the assignment of the customer's possession rights *vis-à-vis* third parties. The retrieval of an item on our part shall – insofar as the Consumer Credit Act does not apply – not constitute a withdrawal from the contract unless we have expressly declared our withdrawal in writing. The customer hereby grants us access to his business premises insofar as such access is necessary for the purpose of collecting the delivered item. This shall have no bearing on any more far-reaching statutory claims arising from the withdrawal.

8.4 We shall be free to seize the reserved goods. Such seizure shall not be deemed to constitute the renunciation of title retention or withdrawal. In the event of an instance of pledge refusal, the customer shall forfeit his right to contract fulfilment. In the event of third-party seizures of or encroachments upon the reserved goods or assigned receivables, the customer shall inform us accordingly in writing without delay so that we can initiate legal proceedings pursuant to § 771 Code of Civil Procedure. In the event of uncollectibility, the customer shall reimburse us for the costs incurred by such intervention, particularly the judicial and extrajudicial costs of legal proceedings pursuant to § 771 Code of Civil Procedure.

8.5 At all times, the reserved goods shall be treated and transformed for us as the manufacturer without such treatment or transformation giving rise to the materialization of any claims against us on the part of the customer. In the event of the reserved goods being treated, mixed or blended with goods which are owned by third parties, we shall acquire co-ownership of the resulting products at the ratio of the invoice value of the reserved goods to the invoice value of the goods owned by third parties. In the event of the reserved goods being blended or mixed with a principal product of the customer, it is hereby agreed that the customer shall transfer to us co-ownership of the new product at the ratio of the invoice value of the reserved goods to the invoice value of the new product.

8.6 The customer is entitled, during the ordinary course of business, to sell the reserved goods or process or blend the same with goods of a different origin. However, this does not apply if and insofar as the non-assignment of the purchase-price claim has been agreed between the customer and his own customers. The customer is not entitled to enter into pledges, assignments as security or any other encumbrances. In the event of resale, the customer shall make the transfer of title contingent upon full payment of the goods by his own customers.

8.7 The customer assigns to us in advance by way of security the full extent of all the claims arising from a resale of the reserved goods, including all subsidiary and security rights, receivable balances from current accounts, bills of exchange and cheques. In the event that the reserved goods should be sold in conjunction with other objects for an overall price, such assignment shall be restricted to the pro-rata amount of our invoice for the reserved goods so sold.

8.8 The customer shall be entitled to collect the receivables arising from resale or processing. This shall have no effect upon our entitlement to collect such receivables ourselves. However, we engage to refrain from collecting such receivables as long as the customer fulfils his payment obligations arising from the proceeds which have been received, does not default on payment and, in particular, no application for the initiation of bankruptcy proceedings has been submitted or the initiation of such proceedings has not been refused on the grounds of insufficient assets. Should the customer's collection authorization have expired he shall, at our request, inform us of the assigned receivables and his debtors, furnish us with all the information necessary for collection purposes, surrender the accompanying documents and notify the debtors of the assignment.

8.9 At the request of the customer, we engage to release at our discretion the securities to which we are entitled with immediate effect to that extent to which its value exceeds the claims for which security is to be furnished by more than 50% not just temporarily.

9 Applicable law – place of jurisdiction – partial invalidity – non-assignment

9.1 The substantive and procedural laws of the Federal Republic of Germany shall apply to these TOB and to all legal relations between ourselves and the customer. The application of the "UN Convention for the International Purchase of Goods (CISG)" is excluded. The sole place of jurisdiction is Cologne.

9.2 Should any one provision of these TOB or a provision contained in other agreements be or become invalid, this shall not affect the validity of the remaining provisions or agreements.

9.3 Any rights arising from this agreement are non-assignable.

Date: November 2009