

# Isabellenhütte USA

## General Terms and Conditions of Sale

The following Isabellenhütte USA General Terms and Conditions of Sale (hereinafter "Seller's Terms & Conditions") shall apply to the purchase of Products from Isabellenhütte USA.

### 1. Parties

Isotek Corporation dba Isabellenhütte USA, (a wholly owned subsidiary of Isabellenhütte Heusler GmbH & Co. KG), a Massachusetts corporation having its primary sales and distribution office at 1199 GAR Highway, Swansea, MA 02777 ("Isabellenhütte USA"), is hereinafter referred to as "Seller". Buyer is the person seeking a quote and/or making a purchase from Seller. Collectively Seller and Buyer are referred to as the "parties", and individually as a "party".

### 2. Acceptance

In addition to the provisions set forth in the Seller's Quotation, Order Acknowledgement and/or Order Confirmation and Invoice, the following Terms and Conditions of sales are hereby integrated: Acceptance of an offer to purchase products from Seller is expressly made subject to the Terms and Conditions stated in this document. None of these Terms and Conditions may be added to, modified, superseded or otherwise changed except in writing and agreed upon by both parties. All orders received from the Buyer by the Seller and/or the Seller's sales representative shall be governed only by the Terms and Conditions contained herein regardless of those supplied with the Buyer's Request for a Quotation, Buyer's Order Acknowledgement, Buyer's Order Confirmation, Buyer's Invoice, Buyer's Purchase Order, Buyer's Release and/or any other document or information provided by any other person concerning the purchase of the products.

### 3. Delivery & Reschedules

All products will be shipped in accordance with the terms of delivery agreed upon between the parties and listed on the purchase order(s). All shipments should be inspected by the Buyer immediately upon receipt and, should damage or loss occur in transit, the Buyer must immediately notify the Seller in writing. All original packaging must be obtained in order for a damage claim to be filed.

Delivery dates cannot be considered definite for production reasons, and shall only act as an approximate time indicator for delivery. The conclusion of the contract shall be subject to the reservation that Seller receives the correct products (on time) from the manufacturers. If the performance time is not determined specifically, delivery shall be effectuated at Seller's earliest convenience.

Changes to the Buyer's order(s) are not accepted until confirmed in writing by the Seller. Requests to push out delivery require forty-five (45) days' notice; requests to pull in delivery will be accommodated whenever possible. Quantity increases/decreases must be confirmed in writing by both parties. Requests to increase may require a separate order, priced at the quantity price of the increased amount only. Requests to decrease may incur cancellation charges. Cancellation requests are accepted within seven

(7) days of the date of the placement of Buyer's order. After seven (7) days, cancellation charges will apply based upon the work in process and/or the stage of completion at the time of the receipt by Seller of the notice of cancellation. The Seller will allow returns of defective material only. Orders may not be returned without a Return Material Authorization number ("RMA"). Orders returned without an RMA will be refused and returned to the Buyer.

Cases of force majeure, which shall be deemed as any and all circumstances and events that cannot be prevented by prudent management, shall discharge the parties from their contractual obligations to perform for the duration of the disturbance and to the extent of the effects caused thereby. If the delays arising therefrom continue for a period of more than six (6) weeks, both parties shall have the right to withdraw from the contract regarding the said obligations. All other claims shall be excluded.

### 4. Shipment/Passage of Risk

Unless otherwise specified on the Buyer's purchase order, shipments will be insured at the Buyer's cost. All shipments will be F.O.B. shipping point, at which point the risk of loss passes to Buyer.

Buyer's requests concerning the manner of shipment shall be considered. Any additional costs thus incurred, even when freight prepaid has been agreed upon, shall be at the Buyer's expense.

### 5. Warranty

**Seller makes no warranties, either express or implied, on products, including any implied warranties of merchantability or fitness for a particular purpose. Seller shall not be liable for consequential, incidental, indirect or special damage whether founded on contract, tort or any other theory of law, nor for any damage that may be caused by a delay in delivery. Seller's sole obligation under any purchase order is limited solely and exclusively to repair and replacement of defective or nonconforming products. The repair or replacement of product will be at no charge to the Buyer, but is conditional upon receipt of written notice of any alleged defect or non-conformance, which notice shall be given promptly upon discovery of same by Buyer. No product shall be returned without prior written consent.**

### 6. Prices & Taxes

The prices set forth in Seller's quote or acknowledgement, as applicable, and/or Seller's representative's quote or acknowledgement, supersedes all previous prices or quotations. All quotations are valid for a period of sixty (60) days, except as noted on the quotation. Prices quoted will not include sales, excise or other government charges. Any such tax, duty or charges now or hereafter imposed upon the sale or shipment of the production to the Buyer will be added to the purchase price. Buyer agrees to reimburse Seller for such tax or charge, or provide an acceptable exemption certificate. Unless expressly stated

# Isabellenhütte USA

## General Terms and Conditions of Sale

otherwise, the prices specified reflect a standard allocation of risk provided by the limited remedies and limitations of liability set forth here. Any modification of the allocation of risk would affect the prices. Failure of any limited remedy in the Terms and Conditions to fulfill its essential purpose shall not be grounds to set aside the limitations of the Seller's liability.

### 7. Terms of Payment

Invoices shall be due for payment thirty (30) days after the date of invoice, without deductions, unless previously agreed upon in writing.

If at any time the financial condition of the Buyer so warrants, or if the Buyer fails to make payment when due, or defaults in any way, the Seller may either alter the terms of payment, suspend credit and withhold further shipment or pursue any legal remedies. In such event, the Seller will be entitled to compensation from the Buyer for its reasonable expenses, including attorney's fees.

### 8. Retention of Title

Seller retains title to all goods until full payment has been made.

### 9. Set Off

Buyer hereby waives any and all rights to offset existing and future claims against any payment due for products sold hereunder or under any other document that the Buyer and the Seller and/or the Seller's representative may enter into, and agrees to pay the amounts due regardless of any claimed offset which may be asserted by the Buyer or on the Buyer's behalf.

### 10. Limitations of Liability

The Seller will not under any circumstances, whether as a result of breach of contract, breach of warranty or tort or otherwise be held liable for consequential, incidental, special or exemplary damages. The Seller's liability on any claim for any loss or damage shall not exceed the price of the specific product or shipment which gives rise to the claim.

### 11. Applicable Law

This document, and the relationship between the parties, shall be governed by the following:

a. For domestic transactions, this document will be governed by the laws of the Commonwealth of Massachusetts applicable to agreements made and to be performed within the Commonwealth of Massachusetts without regard to its choice of law provisions.

b. For international transactions, this document will be governed by the laws of the United States of America, and the laws of the Commonwealth of Massachusetts applicable to agreements made and to be performed within the Commonwealth of Massachusetts without regard to its choice of law provisions.

c. For international transactions, any trade terms in dispute shall in the first instance be interpreted in accordance with laws of the United States of America. For those terms

which are not defined by the laws of the United States of America, those terms shall be interpreted in accordance with the Incoterms 2010 of the International Chamber of Commerce.

### 12. Jurisdiction & Dispute Resolution.

#### a. **Claims & disputes involving domestic transactions.**

All claims, disputes and other matters in question arising in connection with this document and/or the parties' relationship involving domestic transactions shall be decided by binding arbitration in accordance with the rules of the American Arbitration Association currently in effect. The arbitration shall be held in Bristol County, Massachusetts. Buyer irrevocably consents to the venue of Bristol County and the jurisdiction of the Commonwealth of Massachusetts, and to the service of process, pleadings and notices in connection with the arbitration proceeding. The parties shall cooperate in good faith in the selection of the arbitrator and in the scheduling of the arbitration so that a good faith effort to resolve the claims, disputes and other matters shall take place as soon as possible. If the parties cannot agree upon the selection of the arbitrator, the selection shall be made by a justice of superior court sitting in Bristol County, located in Taunton, Massachusetts. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in the Bristol County Superior Court in accordance with Massachusetts law, and Buyer agrees that the judgment shall be accorded full faith and credit in any other State. The parties shall share equally in the administrative costs and fees of such arbitration proceedings but shall be responsible for their individual expenses otherwise incurred; however, if the arbitrator finds that a party acted unreasonably, the arbitrator shall be entitled to award reasonable attorneys' fees and costs to the successful party, including expert witness fees.

#### b. **Claims & disputes involving international transactions.**

All claims, disputes and other matters in question arising in connection with this document and/or the parties' relationship involving international transactions shall be finally settled by arbitration in Bristol County, Massachusetts under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Buyer irrevocably consents to the venue of Bristol County and the jurisdiction of the Commonwealth of Massachusetts, and to the service of process, pleadings and notices in connection with the arbitration proceeding. Judgment upon the arbitration award may be entered in any court having jurisdiction over the parties and/or their assets. The parties shall share equally in the administrative costs and fees of such arbitration proceedings but shall be responsible for their individual expenses otherwise incurred; however, if the arbitrator finds that a party acted unreasonably, the arbitrator shall be entitled to award reasonable attorneys' fees and costs to the successful party, including expert witness fees.

#### c. **Applicability of the Arbitration Clause.**

**IF FOR ANY REASON THE ARBITRATION CLAUSE CONTAINED IN SECTION 12(a) AND/OR**

Isabellenhütte USA  
General Terms and Conditions of Sale

**SECTION 13(b) BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE PURCHASE ORDER(S) OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.**

If Buyer shall challenge the arbitration provision in Section 12(a) and/or Section 12(b), that challenge shall be initiated, depending upon the amount in controversy, either in the Bristol County District Court or the Bristol County Superior Court located in Taunton, Massachusetts, or in the United States District Court for the District of Massachusetts. If the arbitration provision in Section 13(a) and/or Section 13(b) becomes not applicable, Buyer hereby agrees that all claims, disputes and other matters in question shall be initiated, depending upon the amount in controversy, either in the Bristol County District Court or the Bristol County Superior Court located in Taunton, Massachusetts, and Buyer irrevocably consents to the venue of Bristol County and the jurisdiction of the Commonwealth of Massachusetts, and to the service of process, pleadings and notices in connection in connection with any and all actions and processes initiated in the State or Federal court located in said Massachusetts. The parties shall be responsible for their individual expenses otherwise incurred; however, if the court finds that a party acted unreasonably, the court shall be entitled to award reasonable attorneys' fees and costs to the successful party, including expert witness fees.

13. General

a. This document contains all of the documents, representations, and understandings of the parties, and supersedes any previous understandings, commitments, or documents, oral or written, with respect to the subject matter of Buyer's purchase(s) from Seller. To the extent that there is any inconsistency between a term of this document and a term of any document submitted by Buyer, the term of this document will govern the performance hereunder.

b. The information on the Seller's data sheets and in print brochures/catalogs is solely based on data obtained by the Seller from the manufacturer.

c. If any provision of this document should prove to be void, all other provisions herein shall remain in effect.

d. This document may not be modified or amended except in a writing signed by a duly authorized representative of each party that expressly states the sections of this document to be modified; no other act, usage, or custom will be deemed to amend or modify this document.

e. No failure on the part of either party to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other

or further exercise thereof or the exercise of any other right. The waiver by either party of any default or breach of this document will not constitute a waiver of any other or subsequent default or breach.

f. Any provision of this document held to be void, illegal, or unenforceable shall be restated to lawfully reflect the parties' original intent to the fullest extent possible, so the remaining terms and conditions shall survive and remain in full force and effect.

g. Any notice required under this document shall be sent by registered mail, return receipt requested, facsimile, overnight express mail, or by personal delivery to the address of the party set forth at the beginning of this document. Notices sent by registered mail shall be deemed effective on the third business day following mailing. Notices sent otherwise shall be deemed effective on receipt. A party may change its address for notices upon thirty days prior written notice.

h. Buyer may not assign its rights or obligations under this document without Seller's prior written consent.

i. The parties understand and agree that Seller's Terms & Conditions supersede Buyer's terms and conditions. If Buyer, for purposes of administrative convenience, uses Buyer's standard form of purchase order to order materials from Seller, Buyer's terms and conditions shall not be binding upon any transaction between Seller and Buyer.

j. The provisions of this document shall be binding upon and inure to the benefit of the parties and their related representatives, agents, officers, directors, servants, heirs, administrators, executors, successors, assigns, shareholders, members and any other related person, firm, corporation or business entity.