General Terms and Conditions for the Licensing of the Inorganic Crystal Structure Database (ICSD)

§ 1 Parties to the Contract and Description of the Product

(1) The Inorganic Crystal Structure Database (ICSD) contains numeric and bibliographic data of inorganic and intermetallic crystal structures. The database and the FindIt software (hereinafter also referred to as 'Product' or 'ICSD') are a joint product of FIZ Karlsruhe and NIST (The National Institute of Standards and Technology, U.S. Department of Commerce). FIZ Karlsruhe has a copyright in the user interface for internet access to the ICSD, in “ICSD web” and in the “ICSD Desktop” software for local installation.

(2) The ICSD database content is available via a web-based user interface and on CD-ROM/DVD-ROM.

(3) FIZ Karlsruhe’s offer of ICSD is exclusively directed at commercial customers and scientific research and teaching institutions. No contracts with consumers will be made.

(4) FIZ Karlsruhe is the licensor and partner of the Customer. The license agreement is constituted by the acceptance of the Customer’s order by FIZ Karlsruhe. FIZ Karlsruhe accepts the order by activating the Customer’s IP address or assigning passwords for online access, or by delivering the sealed CD-ROM/DVD-ROM version of ICSD and the license key. The present General Terms and Conditions constitute an integral part of the license agreement.

§ 2 Copyright and Rights of Use

(1) The ICSD, the manual and the retrieval software are protected by copyright and ancillary copyright. All rights are held by FIZ Karlsruhe and NIST.

(2) In accordance with the License Agreement and these Terms and Conditions, FIZ Karlsruhe shall grant the Customer a non-exclusive right to use the product for the duration of this Agreement, exclusively for the Customer’s in-house purposes in accordance with the provisions mentioned below. The Customer may choose between different license models quoted in the price list.

(3) The Customer will receive regular updates from FIZ Karlsruhe during the term of this Agreement. The usage right of the Customer shall expire upon expiry of the license.

(4) In any case the Customer shall keep passwords, authorizations for online access, or the license key for the CD ROM strictly confidential. The ICSD may only be used by an authorized user exclusively for his private purposes.

Authorized users shall be deemed all persons whom the Customer has authorized to use the ICSD under a multi-user license in his area of responsibility.

(5) The Customer shall be entitled to download and temporarily store search results on his PC. Information obtained from the database must not be passed on to any
third parties. Any commercial use of the data, whether in printed or electronic form, is prohibited. ICSD data must not be used by Customer or any third party to calculate powder pattern collections for material identification or quantitation, or to make derivative databases for the aforementioned purposes.

(6) The Customer will use reasonable efforts to ensure that his authorized users comply with the provisions of these Terms and Conditions.

§ 3 Data Transmission and Delivery of ICSD CD-ROM/DVD ROM

(1) The responsibility for data transmission and network connection to FIZ Karlsruhe rests with the Customer.

(2) For the CD-ROM/DVD-ROM version only: The CD-ROM/DVD-ROM is delivered at the Customer’s own risk.

Within Germany, delivery of the CD-ROM/DVD-ROM will be effected within 7 days after receipt of the order by FIZ Karlsruhe. Deliveries to other European and non-European countries may take longer, depending on the delivery mode chosen and the Customer’s country of residence. Information on delivery times for deliveries outside Germany via DHL or Deutsche Post are available at: https://www.deutschepost.de/de/b/briefe-ins-ausland/laenderinformationen.html

In case of non-availability of the CD-ROM/DVD-ROM ordered, FIZ Karlsruhe shall promptly notify the Customer at the ordering address and refund the license fee, where appropriate.

§ 4 Invoicing and Payment

(1) FIZ Karlsruhe or its sales partners will invoice the license fee for using the ICSD database to the Customer upon delivery of the CD-ROM/DVD-ROM or upon communication of the access authorization.

(2) Prices are those quoted in the price list valid at the time the order was placed. The current price list, including any recent changes, is available online. VAT and delivery costs as shown in the current price list will be charged in addition. Unless otherwise agreed, the goods will be shipped by mail.

(3) The amount billed is payable without deductions within 30 days from date of invoice. Default in payment arises when Customer fails to pay the due amount prior to or at maturity.

(4) In the event that the Customer is in default of payment, FIZ Karlsruhe shall be entitled to charge a penal interest at the statutory rate of 9% above the prime rate.

(5) For the online version of ICSD only: If the amount due has not been fully paid within thirty (30) days from date of invoice, FIZ Karlsruhe shall be entitled to block Customer’s online access.
(6) The Customer’s access to the ICSD database is subject to prior payment of the invoice received for that period.

§ 5 Liability for Material Defects and General Liability

(1) FIZ Karlsruhe uses great diligence in producing the ICSD and uses specially trained and skilled staff. The crystal structures contained in the ICSD are either delivered by partner organizations or collected from scientific publications and entered into the database by FIZ Karlsruhe. During this process, the data undergo numerous plausibility checks carried out by test programs. However, the Customer is obligated to critically examine the results obtained from these data before using them.

(2) In case that information transmitted to the Customer is defective or faulty to an extent preventing the use of this information, FIZ Karlsruhe shall do anything that is economically justifiable and can be reasonably expected to repair the product within the scope described above, and to supply the Customer with the corrected data. If FIZ Karlsruhe’s first and second attempts to correct the data fail, the Customer shall be entitled to claim compensation for loss provable by documents within the scope of clause (5) below, provided that the Customer, immediately after identifying the defect, sends a written or electronic notification (e-mail) to FIZ Karlsruhe exactly describing the impairment of the information. This shall not affect the Customer’s right to terminate the License Agreement without notice for an important reason. In this case, the proportionate amount of the license fee remaining after termination of the License Agreement will be refunded. Art. 8, para. 2 shall apply.

Apart from this FIZ Karlsruhe’s warranty shall be limited to delivering a flawless product. FIZ Karlsruhe does not make any warranty, express or implied, as to the accuracy, topicality, completeness, usefulness, or fitness for a specific purpose of the database content or the software.

(3) For CD-ROM/DVD-ROM version of ICSD only: If the Product turns out to be defective because of faulty materials, production defects, or shipping damage, the Customer may return the Product, and FIZ Karlsruhe will deliver another copy of the Product on an exchange basis. If replacement fails because the Product delivered as replacement is again found to be defective, the Customer is entitled to cancel the contract. The Customer may present claims arising from liability for material defects only within a period of 12 months after receipt of the Product.

(4) For CD-ROM/DVD-ROM version of ICSD only: In the event of obvious defects of the Product, shipping damage or incomplete delivery in particular, FIZ Karlsruhe will accept warranty only if the Customer sends a written or electronic notification to FIZ Karlsruhe within a period of 10 working days from the date of receipt of the Product.

(5) FIZ Karlsruhe’s liability shall be limited to damages caused by willful intent or gross negligence attributable to FIZ Karlsruhe, its legal representatives or its vicarious agents, unless essential contractual obligations have been breached, including, but not limited to, the obligation to provide the appropriate software for using the database or to deliver the agreed volume of data. In this event, FIZ
Karlsruhe’s liability shall be limited to damages caused as a typical and foreseeable consequence of such breach of contract. Statutory liability for damages arising out of death or injury to body or health, and liability according to the Product Liability Act shall remain unaffected.

(6) **For online version of ICSD only:** FIZ Karlsruhe disclaims any liability for damage incurred by the Customer as a consequence of improper use or loss of the Customer's access authorization in the Customer's area of responsibility.

(7) The information contained in the user manual concerning information contents and functions is to illustrate the uses of the database; it is not to be viewed as a legally binding representation as to certain characteristics of the Product. FIZ Karlsruhe therefore does not guarantee that the Product may be suited for all purposes intended by the Customer.

(8) FIZ Karlsruhe reserves the right to make changes in the volume, data content and retrieval software of the ICSD database and disclaims any warranty arising from such changes. In the event of significant changes of the content or the retrieval software of the ICSD database, art. 9, para. 2 shall apply accordingly. In such case, the Customer is entitled to terminate the License Agreement upon 30 days prior written notice to the date the changes become effective.

### § 6 Obligations of the Customer

The Customer is obliged to act in compliance with the provisions of these Terms and Conditions, in particular with the provisions in art. 2 para. 2 to 6 governing the scope of use. If the Customer fails to comply with essential contractual obligations and if the Customer fails to heal such breach of contract within 30 days upon express request by FIZ Karlsruhe, FIZ Karlsruhe shall be entitled to cancel the Customer's license forthwith. This also applies if it is a user authorized by the Customer who fails to comply with the provisions of the agreement. Any communications of FIZ Karlsruhe in this respect shall be made in writing; e-mails shall be considered to be communications in writing. In case of termination of the Agreement, the Customer shall be bound by the provisions set forth in Art. 8 para. 2.

### § 7 Secrecy and Data Privacy Protection

(1) **For the online version of ICSD only:** Maintaining confidentiality of the Customer's password(s) and access authorizations is the Customer's responsibility and risk in his area.

(2) FIZ Karlsruhe uses appropriate efforts in its area of responsibility to ensure that information provided by the Customer will be treated strictly confidential.

(3) The Customer’s personal data are exclusively used for the purposes of performing this agreement, for billing the services used by the Customer, and, subject to the Customer’s approval – for customer liaison and support (sending product information; telephone advice on how to use the ICSD; training offers; and for improving the product). Within the scope of its contractual obligations FIZ
Karlsruhe shall be entitled to store and process personal data of the Customer in electronic form.

§ 8 Duration and Termination of the Agreement

(1) The License Agreement for using the ICSD database and its updates as described in art. 2, para. 3, sentence 1 is concluded for a limited period of time, as stated in the Customer's order. The License Agreement will be prolonged automatically for another year unless terminated in writing by the Customer not later than 30 days prior to the end of the contract year.

(2) Upon termination of the License Agreement, the Customer shall, if relevant, be obliged to remove the database and software from his intranet and internal server(s) without delay. The Customer shall also be liable to FIZ Karlsruhe for deleting all copies of the ICSD database and software from his computer/s.

§ 9 Changes in the Terms and Conditions

(1) FIZ Karlsruhe reserves the right to make changes in these Terms and Conditions.

For CD-ROM/DVD-ROM version of ICSD only: The Customer shall be informed in writing at his address as given in the order form or at his latest invoicing address.

For the online version of ICSD only: The Customer shall be informed online about any changes.

(2) Changes must be communicated at least 60 days prior to their coming into effect. If the Customer continues to use the services ordered after the changes became effective, this shall be deemed acceptance of the changed conditions.

§ 10 Assignment of Rights

The Customer must not assign any of his rights under this License Agreement to any third party without prior written consent by FIZ Karlsruhe.

§ 11 Final Provisions

(1) These General Terms and Conditions of FIZ Karlsruhe shall not be modified by any other General Terms and Conditions of the Customer and shall, in all cases, supersede any conflicting provisions contained therein.

(2) Any oral collateral agreements are valid only if they have been confirmed in writing by both parties.

(3) Any amendments or additions to the License Agreement shall be made in writing and agreed upon by both parties.
(4) The place of performance is the registered office of FIZ Karlsruhe. The place of jurisdiction is Karlsruhe, Germany, if the Customer is a merchant, a federal special fund under public law or a legal entity under public law. Any dispute, controversy or claim arising out of or relating to this License Agreement shall be settled in accordance with the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

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