

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

The text in bold face is for compliance with statutory duties of FIZ Karlsruhe, to provide information to customers in accordance with a German regulation (BGB-InfoV).

§ 1 Parties to the Contract and Description of the Product

(1) The Inorganic Crystal Structure Database (ICSD) contains numeric and bibliographic data of inorganic crystal structures. The database, the software and the manual (hereinafter also referred to as 'Product' or 'ICSD') are a joint product of FIZ Karlsruhe and NIST. The interface for internet access to ICSD was developed in a co-operation between FIZ Karlsruhe, Institut Laue - Langevin (ILL) at Grenoble, France, and [Text deleted] Grenoble, France.

(2) The ICSD database is available on the Internet and on CD-ROM.

(3) FIZ Karlsruhe is the licensor and partner of the customer. The license agreement is constituted by the acceptance of the filled-in customer order form by FIZ Karlsruhe. The present General Terms and Conditions constitute an integral part of the license agreement.

§ 2 Protection by 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. The Internet interface is protected by copyright held by ILL Grenoble. The rights to the PHP-MySQL WWW interface (2003) are held by [Text deleted] he rights to the 3D crystal structure visualization software, xtal-3d (1994-2003) by [Text deleted]

(2) Usage licenses are conveyed to the Customer exclusively through FIZ Karlsruhe as the licensor.

(3) FIZ Karlsruhe will provide the Customer with a password and with access authorization to the database. The customer shall keep the password and access authorization strictly confidential.

(4) 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 following specifications.

CAMPUS LICENSE (universities and colleges only) with more than 4 IP identifications: The campus license also applies to all university departments and institutions on the campus that are not legally independent. The Customer may grant access to the ICSD database to authorized users only as defined in Annex 1.

(5) The Customer will use reasonable efforts to ensure that his authorized users comply with the provisions of these Terms and Conditions including the provisions governing authorized use as defined in Annex 2.

§ 3 Data Transmission

The responsibility for data transmission and network connection to FIZ Karlsruhe rests with the Customer. FIZ Karlsruhe warrants that the ICSD database will have 100% uptime, except for the time needed for maintenance.

For the CD-ROM Version only: If the Customer is an undertaking, the CD-ROM is delivered at the Customer's risk.

If the Customer is a consumer, the CD-ROM is delivered at FIZ Karlsruhe's risk.

§ 4 Invoicing and Payment

(1) FIZ Karlsruhe or its sales partners will invoice the licence fee for using the ICSD database to the Customer upon delivery of the CD-ROM or upon communication of the access authorization, and afterwards at the beginning of every subsequent renewal period (12 months) of the License Agreement .

(2) **For CD-ROM version of ICSD only:** If the user chooses to purchase a permanent license according to art. 2, para. 4 (e), he only acquires possession of the product upon complete payment of the applicable price quoted in the price list.

(3) Prices are those quoted in annex 3 valid at the time the order was placed or at the beginning of subsequent renewal periods of the License Agreement. In the beginning of subsequent renewal periods the prices quoted in annex 3 are adjusted according to the current price list. The current price list, including any recent changes, is available online.

(4) The amount billed becomes due upon receipt of the invoice and is payable without discount. Default in payment arises when the customer fails to pay the full amount within 30 days upon receiving a reminder from FIZ Karlsruhe.

(5) In the case that a Customer is in default of payment, FIZ Karlsruhe is entitled to charge a penal interest of 9%. If the Customer is a consumer, a penal interest of 6% is to be paid.

(6) Non-payment will not be interpreted as termination of the License Agreement.

(7) The customer is informed that the right of access to the ICSD database and its use in the following year are subject to prior payment of the invoice received for that period.

§ 5 Liability for Material Defects and General Liability

(1) While the crystal structure data and the retrieval software were not compiled and produced by FIZ Karlsruhe, FIZ Karlsruhe has used them carefully and conscientiously in producing this Product. FIZ Karlsruhe therefore does not make any warranty, express or implied, for the accuracy, completeness or usefulness of the database contents or the software.

In case that information transmitted to the Customer is defective or faulty to an extent preventing the contractual use of that information, FIZ Karlsruhe will lend assistance in procuring the correct information. Furthermore, the Customer may claim compensation for loss provable by documents, 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.

(2) **For CD-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.

(3) **For CD-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.

(4) FIZ Karlsruhe will only be liable for damage caused by willful intent or gross negligence attributable to FIZ Karlsruhe, its legal representatives or persons employed in performing its obligations, unless in case of damage resulting from breach of essential obligations of the contract. In such cases, FIZ Karlsruhe's liability is limited to damages caused as a typical and foreseeable consequence of the breach of contract. Liability according to the Product Liability Act remains unaffected.

(5) **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 this context, FIZ Karlsruhe particularly warns of the risks involved in transmitting such information via the Internet, because the currently available security technologies or procedures cannot guarantee best security.

(6) 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 providing a legally binding assurance of certain characteristics of the Product. FIZ Karlsruhe therefore does not guarantee that the Product may be suited for all purposes intended by the Customer.

(7) Unless otherwise provided herein, 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. However, FIZ Karlsruhe shall give the Customer sixty (60) days notice in writing of significant changes to the scopes or retrieval software of the ICSD database. 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

(1) The Customer is committed to acting in compliance with the provisions of these Terms and Conditions, in particular with the provisions in Art. 2 para. 4 and Art. 2 para. 5 above. In case of non-compliance of the Customer with essential contractual obligations and if the Customer fails to heal such breach of contract within 10 days upon express request by FIZ Karlsruhe, FIZ Karlsruhe is entitled to cancel the Customer's license forthwith.

(2) If a user authorized by the Customer fails to comply with the provisions of the License Agreement, the Customer shall promptly notify FIZ Karlsruhe of this breach of agreement, in order to enable FIZ Karlsruhe to take legal steps against the breaching third party. If FIZ Karlsruhe learns of any such event, it shall inform the Customer accordingly. In any such case, FIZ Karlsruhe is entitled to block the user's access to the ICSD after 10 (ten) days if the breach cannot be remedied within this time. Both Parties shall work together in good confidence and exchange all available information which FIZ Karlsruhe deems necessary to

solve the problem. Once the misuse has been stopped, FIZ Karlsruhe shall reopen the user's access to the ICSD without delay.

(3) Any communications of FIZ Karlsruhe in this respect will be 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 Confidentiality and Data Privacy Protection

(1) For the online version of ICSD only: Maintaining confidentiality of the Customer's password(s) 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) FIZ Karlsruhe collects and uses personal data of the Customer exclusively for performance of the License Agreement, account management and billing of services rendered. Within the scope of its contractual obligations FIZ Karlsruhe is entitled to store and process personal data of the Customer in electronic form.

§ 8 Duration and Termination of the License Agreement

(1) The License Agreement for using the ICSD database and its updates as described in art.2, para. 4 is concluded for a period of one year as stated on the invoice. The Customer Agreement will automatically be prolonged for another year unless terminated in writing by the Customer no 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 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

FIZ Karlsruhe reserves the right to make changes in these Terms and Conditions, of which the Customer shall be informed in writing at his address as given in the order form or at his latest invoicing address. Changes must be communicated at least 60 days prior to their coming into force. If the Customer continues to use the services ordered after the changes became effective, his acceptance of the changed conditions shall be assumed.

§ 10 Assignment of Rights

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

§ 11 Final Clause

(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 inconsistent or 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 and these General Terms and Conditions shall be done in writing and agreed upon by both parties.

(4) Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

Information for Customers if they are Consumers

Information about FIZ Karlsruhe

I. Name and address

Fachinformationszentrum (FIZ) Karlsruhe
Hermann von Helmholtz-Platz 1
76344 Eggenstein-Leopoldshafen

II. Customer support:

Tel.: [Text deleted]

Fax.: (+49) 7247 808 132

[Text deleted]

Legal representative:

[Text deleted]

Managing Director and CEO of Fachinformationszentrum

(FIZ) Karlsruhe

III. Right of Withdrawal (only for consumers having ordered the CD-ROM version of the ICSD database)

The Customer is entitled to cancel the order, without stating reasons, within a period of 14 days from receipt of the Product. After communication of this cancellation, the Customer is obliged to return the Product to FIZ Karlsruhe in due time at his own expense, except where the invoiced value of the Product exceeds the amount of [Text] in this case, FIZ Karlsruhe will pay the cost of return shipment. Compliance with time limits is construed if the product is returned together with the cancellation of the order in good time. The Customer's right to cancel an order will become extinct when the Customer breaks the seal of the product delivered.

IV. Information on Products and terms of delivery for the CD-ROM version of the ICSD database

(Please take note of the other texts in bold face as well.)

1. FIZ Karlsruhe sells the ICSD edited on CD-ROM as stated in Art. 2 para. 4 and Art. 2 para. 5. The CD-ROM contains a numeric database produced by FIZ Karlsruhe and its partners.

2. The License Agreement comes into effect when the Customer accepts the CD-ROM and breaks the seal.

3. Purchase prices are those valid at the time the order was placed, plus VAT and delivery costs, as shown in the current price list (unless otherwise stated, the goods will be shipped by mail).

4. In case of non-availability of the CD-ROM ordered, FIZ Karlsruhe will promptly notify the Customer and will refund the license fee, where appropriate.

5. Delivery will be effected within 14 days after receipt of the order by FIZ Karlsruhe.

Last update: September 2006

CUSTOMER: SIGNED BY

Name (please print) [Text deleted] [Text deleted]
Title Associate University Librarian [Text deleted]
Authorized Signature _____ [Text deleted]
On behalf of University of California
Date May 16, 2007

FIZ Karlsruhe: SIGNED BY

Name [Text deleted]
Title HEAD FIZ KARLSRUHE MARKETING & SALES, HEAD FIZ PRODUCTS & SERVICES
Authorized Signature _____ [Text deleted]
On behalf of FIZ Karlsruhe
Date 22. JUNE 2007

Annotations to the Agreement concerning use of the Web Version of the ICSD database by the University of California, Los Angeles

Annex 1

Authorized Users. "Authorized Users" are persons affiliated with the University of California, Los Angeles. Full and part time employees (including faculty, staff, and independent contractors) and students of Licensee and the institution of which it is a part, regardless of the physical location of such persons. For campus locations see Appendix A.

Access by and Authentication of Authorized Users. Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor. The use of proxy servers is permitted as long as any proxy server IP addresses provide limit remote or off-campus access to Authorized Users.

Annex 2

Authorized Uses. The Licensed Materials may be used for purposes of research, education or other noncommercial use as follows:

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Annex 3

Campuses of the University of California(UC) listed in table 1 may join the UC consortium for licensing the Web version of the ICSD database by signing the accompanying terms & conditions. Depending on the number of participating campuses, the University of California will pay the annual license fees given in table 2 directly to FIZ Karlsruhe. Full Annual license fees will be paid by UC for those campuses that join the consortium after the beginning of the annual subscription periods.

Table 1: Campuses of the University of California that may the join the agreement between FIZ Karlsruhe and University on campus licenses for the web version of ICSD database.

UC Los Angeles
UC Santa Barbara
UC San Diego
UC Riverside
UC San Francisco
UC Irvine
UC Davis
UC Berkeley
UC Merced
UC Santa Cruz

Table 2 Prices for campus licenses for the Web version of the ICSD database payable by the University of California. Payable without any deduction.

Number of participating campuses of UC	Price in Euro (€)
1	[Text deleted]
2	
3	
4	
5	
6	
7	
8	
9	
10	