

# General Terms and Conditions for the Licensing of the Inorganic Crystal Structure Database ("ICSD License Agreement")

May 2021

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## 1. PARTIES TO THE ICSD LICENSE AGREEMENT AND DESCRIPTION OF THE PRODUCT

1. The Inorganic Crystal Structure Database (ICSD) contains the numeric and bibliographic data of inorganic and intermetallic crystal structures. The database (hereinafter also referred to as 'Product' or 'ICSD') contains data from FIZ Karlsruhe. 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's content is available via a web-based user interface and on a data medium for local installation.
3. **FIZ Karlsruhe's offer of the ICSD is exclusively directed at commercial customers and scientific research and teaching institutions. No contracts with consumers will be made.**

FIZ Karlsruhe is the licensor and partner of the Customer. The ICSD License Agreement is constituted by the acceptance of the customer's order of the ICSD by FIZ Karlsruhe. The respective type of license is defined on the website (<https://icsd.products.fiz-karlsruhe.de/en/support/support#price+list+%2F+order>) and is subject to the General Terms and Conditions laid down in this ICSD License Agreement. Depending on the chosen version of the license, FIZ Karlsruhe accepts the order by activating the Customer's

IP address, or by assigning passwords for online access, or by delivering the sealed data medium and the license key to the customer.

## 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. The Customer must ensure that the copyright notices, trademarks, trade names, markings or notices affixed to, or contained in, the licensed material are not removed or altered and that they are included in any excerpt of the licensed materials.
2. In accordance with this ICSD License Agreement and these Terms and Conditions, FIZ Karlsruhe shall grant the Customer a non-exclusive right to use the product. "To use" in this context means to access the ICSD, to search and to download limited parts of the content of the ICSD as defined in these Terms and Conditions. The Customer shall be entitled to use the ICSD in accordance with the provisions mentioned below, exclusively for the Customer's in-house purposes if not otherwise defined hereinafter. Only Customers holding relevant licenses shall be entitled to carry out analyses for customers in industry or to use the data for industrial projects. Automatic download of data, text mining or the indexing of the content of the database is not allowed, unless explicitly stipulated oth-

erwise by mandatory law. The Customer may choose between the different license models quoted in the price list.

3. The Customer will receive regular database updates from FIZ Karlsruhe during the term of this Agreement. The usage right of the Customer shall end upon expiry of the license.
4. In any case, the Customer shall keep any passwords, authorizations for online access, or the license keys for data carriers strictly confidential. The ICSD may only be used by an authorized user exclusively for the purposes outlined above. Authorized users shall be deemed to be all persons whom the Customer has authorized to use the ICSD under a multi-user license in the Customer's area of responsibility. In case of campus licenses, authorized users are the students and staff of the universities.
5. The Customer shall be entitled to download and temporarily store search results on their own media only subject to the following conditions In the case of institute/department or campus licenses the download is limited to a maximum of 20,000 (twenty thousand) database records. If the Customer is a natural person, the download is limited to a maximum of 5,000 (five thousand) database records. Information obtained from the database must not be passed on to any third parties or unauthorized users. Any commercial use of the data, whether in printed or electronic form, is prohibited. However, the Customer shall be entitled to share up to 10 (ten) database records with a client if the Customer uses the ICSD for the purpose of carrying out analyses for industrial enterprises in accordance with this ICSD License Agreement. Sharing information is permitted up to a maximum of 20 (twenty) database records for educational purposes and publication. ICSD data must not be used by the Customer or by any third party to calculate powder pattern collections for material identification or quantitation, or to make derivative databases for these purposes.

6. The Customer will use reasonable efforts to ensure that their authorized users comply with the provisions elaborated in this ICSD License Agreement.

### **3. DATA TRANSMISSION AND DELIVERY OF THE DATA MEDIA**

1. The responsibility for data transmission and network connection to FIZ Karlsruhe rests with the Customer.
2. **For the data medium version only:** The data medium is delivered at the Customer's own risk.

Within Germany, the delivery of the data medium will happen within 7 (seven) days of the receipt of the order by FIZ Karlsruhe. Deliveries to other European and non-European countries may take longer, depending on the Customer's country of residence. Information on delivery times for deliveries outside Germany via DHL or Deutsche Post is available at: [www.deutschepost.de/de/b/briefe-ins-ausland/laenderinformationen.html](http://www.deutschepost.de/de/b/briefe-ins-ausland/laenderinformationen.html)

In case of the non-availability of the data medium 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 the use of the ICSD to the Customer upon delivery of the data medium or upon communication of the access authorization.
2. The applicable 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 (<https://icsd.products.fiz-karlsruhe.de/en/support/support>). VAT and delivery costs as shown in the current price list will be charged in addition to the price stated in the price list. The goods will be shipped by mail (without tracking option).

3. The amount billed is payable without deductions within 30 (thirty) days from date of invoice. Default in payment arises when the Customer fails to pay the due amount prior to, or at, maturity.
4. If the amount due has not been fully paid within sixty (60) days from the date of invoice, FIZ Karlsruhe shall be entitled to block the Customer's online access to the ICSD.
5. In the event that the Customer is in default of payment, FIZ Karlsruhe shall be entitled to charge penal interest at the statutory rate of 9 (nine) % above the prime rate.

#### **5. LIABILITY FOR MATERIAL DEFECTS AND GENERAL LIABILITY**

1. FIZ Karlsruhe is diligent 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. Faults, if any, are commented on. 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 information. 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(5) below, provided that the Customer, immediately after identifying the defect, sends a written or electronic notification (e-mail) to FIZ Karlsruhe describing exactly the problem in the information. This shall not affect the Customer's right to terminate the ICSD License Agreement without notice for an important reason. In this case, the proportionate amount of the

license fee remaining after termination of the ICSD License Agreement will be refunded. §8(2) shall apply.

Apart from the above, FIZ Karlsruhe's warranty shall be limited to delivering a state of the art 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 the data medium version of the 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 this replacement fails because the Product delivered as a 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 the data medium 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 14 (fourteen) working days from 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 typical and foreseeable consequences of such a 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 the online version of the 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 aimed at illustrating 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 will 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 and excludes any warranty arising from such changes. In the event of significant changes in the content or the retrieval software of the ICSD, §8(2) shall apply. In case of a significant change the Customer is entitled to terminate the ICSD-License Agreement upon 30 (thirty) 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 §2(2)-(6) governing the scope of use. If the Customer fails to comply with essential contractual obligations and if the Customer fails to heal such a breach of contract within 30 (thirty) days upon express request by FIZ Karlsruhe, FIZ Karlsruhe shall be entitled to cancel the Customer's license with immediate effect. This also applies if a user authorized by the Customer fails to comply with the provisions of the agreement. Any communications by FIZ Karlsruhe in this respect shall be made in writing. In case of termination of the Agreement, the Customer shall be bound by the provisions set forth in §8(2).

## 7. SECRECY AND DATA PRIVACY PROTECTION

1. Maintaining the confidentiality of the Customer's password(s) and access authorizations is the Customer's responsibility and risk.
2. FIZ Karlsruhe will make appropriate efforts in its area of responsibility to ensure that information provided by the Customer will be treated in strict confidence.
3. The Customer's personal data are exclusively used for the purposes of performing this agreement, for billing the services used by the Customer, to provide agreed customer-related user statistics, to manage the access of the Customer's organization to the ICSD, and for customer support (§6(1)(b) and (f) GDPR). Within the scope of its contractual obligations, FIZ Karlsruhe shall be entitled to store and process the Customer's personal data in electronic form. Additional information can be found [in our general Privacy Policy. \(https://icsd.products.fiz-karlsruhe.de/en/ueber-uns/daten-schutzerklaerung\)](https://icsd.products.fiz-karlsruhe.de/en/ueber-uns/daten-schutzerklaerung)

## 8. DURATION AND TERMINATION OF THE AGREEMENT

1. The ICSD License Agreement for using the ICSD and its updates, as described in §2(2) and (3), is concluded for a limited period of time, as stated in the Customer's order. The ICSD License Agreement will be prolonged automatically for another year unless terminated in writing by the Customer not later than 30 (thirty) days prior to the end of the contract year.
2. Upon termination of the ICSD License Agreement, the Customer shall, as relevant, be obliged to remove the database and software from his intranet and internal server(s) without undue delay. The Customer shall also be liable to FIZ Karlsruhe for deleting all copies of the ICSD, software, and extracted data from his computer and from other media immediately.

## 9. CHANGES IN THE TERMS AND CONDITIONS

FIZ Karlsruhe reserves the right to make changes to these General Terms and Conditions. The Customer shall be informed about such changes.

If the Customer fails to object to these changes within 14 (fourteen) days or continues to use the services, this shall be deemed acceptance of the changed conditions.

## 10. ASSIGNMENT OF RIGHTS

The Customer must not assign any of their rights granted under this ICSD 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 amendments or additions to this ICSD License Agreement shall be made in writing ("Textform" according to §126(b) BGB).
3. 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. This ICSD License Agreement is construed under and governed by 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.



Leibniz Institute for Information Infrastructure

