



TERMS OF USE/COPYRIGHT POLICY

Welcome to TMS.org (the "Site"). This Site is provided by The Minerals, Metals & Materials Society, Inc. (referred to throughout this Site as "TMS") as a means to promote the global science and engineering professions concerned with minerals, metals, and materials. Please review the following basic rules that govern your use of the TMS.org site (the "Agreement"). **Please note that your use of the TMS.org site constitutes your unconditional agreement to follow and be bound by these Terms of Use.** Although you may "bookmark" a particular portion of this Site and thereby bypass this Agreement, your use of this Site still binds you to these Terms of Use. TMS reserves the right to update or modify these Terms of Use at any time without prior notice to you. For this reason, we encourage you to review these Terms of Use whenever you use this Site.

A. Ownership of Site Materials

All articles, information, text, images, data, software, and other materials contained in or on this Site are copyrighted either by TMS ("TMS Site Materials") or by a third party ("Third Party Site Materials"). TMS owns or has obtained permission from the owner to use all of the materials contained in or on this site under United States and international copyright laws. The compilation (meaning the selection, coordination, and arrangement) of all content on this Site is the exclusive property of TMS and is also protected by U.S. and international copyright laws.

References on this Site to any names, marks, products, or services of third parties or hypertext links to third party sites or information are provided solely as a convenience to you and do not in any way constitute or imply TMS's endorsement, sponsorship or recommendation of the third party, information, product, or service. TMS is not responsible for the content of any third party sites and does not make any representations regarding the content or accuracy of material on such sites.

B. Use of TMS Site Materials

You are not permitted to distribute, publicly display or publish, modify, or create derivative works based on any TMS Site Materials. To request permission to use TMS Site Materials, please e-mail TMS at permissions@tms.org.

Notwithstanding the foregoing, you are permitted to use TMS Site Materials for your own personal and noncommercial use, provided that (a) TMS is properly cited as the source and copyright owner of the TMS Site Materials, (b) the TMS Site Materials are not used in any way that implies endorsement by TMS of a product or service, and (c) the TMS Site Materials are not offered for sale or otherwise used commercially. In addition, TMS Site Materials may not be used in any manner that attributes false or misleading statements to TMS.

In addition, TMS maintains a relationship with the Copyright Clearance Center, which is authorized to grant certain rights to distribute some materials from some TMS publications in exchange for a fee for noncommercial purposes. If you wish to obtain a license to use materials published in TMS publications or on this Site that are covered by a Copyright Clearance Center license, please contact the Copyright Clearance Center directly. For more information contact the Copyright Clearance Center at www.copyright.com.

C. Use of Third Party Site Materials

Unless otherwise indicated, you are not permitted to distribute, publicly display or publish, modify or create derivative works based on any Third Party Site Materials, including those Third Party Site Materials appearing in the Digital Resource Center. Requests to use Third Party Site Materials should be directed to the copyright owner of the work you wish to use.

D. Materials Submitted for Posting to the Digital Resource Center

For all articles, information, text, images, data, software, and other materials that you submit to TMS for consideration for use in the Digital Resource Center (collectively, the “Submitted Content”), you agree to the following:

1. You and/or anyone giving you permission to use the Submitted Content will retain all right, title, and interest in the Submitted Content, except for the rights granted to TMS under these Terms of Use, under copyright law, or otherwise.
2. You grant TMS a royalty-free, perpetual, irrevocable, non-exclusive right and license to use, copy, modify, display, archive, store, distribute, reproduce, and create derivative works from all Submitted Content, in any form, media, software, or technology of any kind now existing or developed in the future.
3. You warrant that the Submitted Content does not violate any right of any third party, including copyright, trademark, privacy or other personal or proprietary right(s), and will not cause injury to any person or entity. You further warrant that you have received permission to use any third party materials included in the Submitted Content.
4. You warrant that the Submitted Content does not contain any matter that is defamatory, vulgar, obscene, or that violates any statutory or common law.
5. You agree to defend, indemnify, and hold harmless TMS and all persons acting under TMS’s permission or authority, against any and all claims, damages, costs, and expenses, including attorneys’ fees, arising from or related to the Submitted Content.

E. Comments Submitted to Discussion Areas and Blogs

All comments, feedback, suggestions, articles, information, text, images, data, software, and other materials disclosed, submitted, or offered by you in the Discussion and Blog Areas of TMS.org (collectively, the “Comments”) shall be and remain TMS’s property. Such disclosure, submission or offer of any Comments shall constitute an assignment to TMS of all worldwide right, title, and interest in all copyrights and other intellectual property in the Comments.

Thus, TMS will own exclusively all such right, title, and interest and shall not be limited in any way in its use, commercial or otherwise, of any Comments. TMS will be entitled to use, reproduce, disclose, modify, adapt, create derivative works from, publish, display, and distribute any Comments that you submit for any purpose whatsoever, without restriction and without compensating you in any way. TMS is and shall be under no obligation (1) to maintain any Comments in confidence or (2) to pay to you any compensation for any Comments. You agree that any Comments submitted by you will not violate this Agreement or any right of any third party, including copyright, trademark, privacy or other personal or proprietary right(s), and will not cause injury to any person or entity. You further agree that no Comments submitted by you will contain any matter that is defamatory, vulgar, obscene, or that violates any statutory or common law.

TMS does not regularly review posted Comments, but does reserve the right (but not the obligation) to monitor and edit or remove any Comments submitted. You grant TMS the right to use the name that you submit in connection with any Comments. You agree not to use any false information, impersonate any person or entity, or otherwise mislead as to the origin of any Comments you submit. You are and shall remain solely responsible for the content of any Comments you make and you agree to indemnify TMS and all persons acting under TMS’s permission or authority for all claims resulting from any Comments you submit. TMS takes no responsibility and assumes no liability for any Comments submitted.

F. Claims of Copyright Infringement – DMCA Notice

It is the policy of TMS to respond to claims of copyright infringement. We will promptly process and investigate notices of alleged infringement by third parties and will take appropriate actions under the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2) (“DMCA”), where applicable.

Pursuant to the DMCA, notifications of claimed copyright infringement by third parties should be sent to TMS’s Designated Agent. If you believe that your copyrighted work has been infringed under U.S. copyright law and is accessible on this website, please notify us by contacting our Designated Agent. Even if you believe that the alleged infringing work was not posted by a third party, please send all notifications of claimed copyright infringement to TMS’s Designated Agent listed below.

To be effective under the DMCA, notification of claims of copyright infringement by third parties must be a written communication to TMS’s Designated Agent that includes the following:

- (1) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

- (2) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (3) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit TMS to locate the material;
- (4) Information reasonably sufficient to permit TMS to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- (5) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (6) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

TMS's Designated Agent for notice of claims of copyright infringement can be reached as follows:

By mail:
Matt Baker
The Minerals, Metals & Materials Society
184 Thorn Hill Road
Warrendale, Pennsylvania 15086

By e-mail:
mbaker@tms.org

This contact information is only for reporting claims of copyright infringement. Contact information for other matters is provided elsewhere on this site.

Upon receipt of notification of alleged copyright infringement by a third party, TMS shall remove or disable access to the material identified in the notice, forward the written notification to the alleged infringer, and take reasonable efforts to notify the alleged infringer that it has removed or disabled access to this material.

You should be aware that, under the DMCA, claimants who make misrepresentations concerning copyright infringement may be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer or by TMS, if injured by relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

If a notice of copyright infringement has been filed against you, you may file a counter notification with the Designated Agent at the address listed above.

To be effective, a counter notification must be a written communication provided to the TMS's Designated Agent that includes the following:

- (1) A physical or electronic signature;
- (2) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- (3) A statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
- (4) Your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if your address is outside of the United States, for any judicial district in which TMS may be found, and that you will accept service of process from the complainant who provided the original notification or an agent of such person or entity.

If TMS receives a valid counter notification, it shall provide the complainant with a copy of the counter notification, inform the complainant that it will replace the removed material or cease disabling access to it in 10 to 14 days from receipt of the counter notification, and replace the removed material or cease disabling access to it in 10 to 14 business days, provided that

TMS has not received notice from the complainant that an action has been filed seeking a court order to restrain the alleged infringer from engaging in infringing activity relating to the material on TMS's system.

You should be aware that the DMCA provides substantial penalties for a false counter notification filed in response to a notice of copyright infringement. Claimants who make misrepresentations in their the counter notification statement may be liable for any damages, including costs and attorneys' fees, incurred by any copyright owner or copyright owner's authorized licensee, or by TMS, if injured by relying upon such misrepresentation in replacing the removed material or ceasing to disable access to it.

G. Disclaimers

THIS SITE AND THE MATERIALS ON THIS SITE ARE PROVIDED BY TMS ON AN "AS IS" AND "AS AVAILABLE" BASIS. TMS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE OR THE INFORMATION, CONTENT, OR MATERIALS INCLUDED ON THIS SITE. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, TMS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACKNOWLEDGE, BY YOUR USE OF THE TMS.ORG WEB SITE, THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK.

WE DO NOT WARRANT THAT THE FUNCTIONS OR MATERIALS ON THIS WEB SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS WEB SITE OR THE SERVERS THAT MAKE SUCH MATERIALS AND FUNCTIONS AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE MATERIALS ON THIS WEB SITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

H. Limitation of Liability

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL OR EQUITABLE THEORY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, SHALL TMS OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE TMS.ORG WEB SITE OR MATERIALS OR FUNCTIONS ON THE TMS.ORG WEB SITE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF AN AUTHORIZED REPRESENTATIVE OF TMS HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL TMS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID BY YOU, IF ANY, IN CONNECTION WITH YOUR USE OF THE SITE.

I. Indemnification

You agree to defend, indemnify and hold harmless TMS and its affiliates from and against any and all claims, damages, costs and expenses, including attorneys' fees, arising from or related to your use of the Site.

J. Site Security

You are prohibited from violating or attempting to violate the security of the Site, including, without limitation, (a) accessing data not intended for such user or logging onto a server or an account which the user is not authorized to access; (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (c) attempting to interfere with service to any user, host or network, including, without limitation, via means of submitting a virus to the Site, overloading, "flooding," "spamming," "mailbombing" or "crashing;" (d) sending unsolicited email, including promotions and/or advertising of products or services; or (e) forging any TCP/IP packet header or any part of the header information in any email or newsgroup posting. Violations of system or network security may result in civil or criminal liability. TMS reserves the right to investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of this Site or any activity being conducted on this Site. You agree, further, not to use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars, or intelligent agents) to navigate or search this Site

other than the search engine and search agents available from TMS on this Site and other than generally available third party web browsers (e.g., Netscape Navigator, Microsoft Internet Explorer).

K. Termination

These Terms of Use are effective unless and until terminated by either you or TMS. You may terminate this Agreement at any time, provided that you discontinue any further use of this Site. TMS also may terminate this Agreement at any time and may do so immediately without notice, and accordingly deny you access to the Site, if in TMS's sole discretion you fail to comply with any term or provision of this Agreement. Upon any termination of the Agreement by either you or TMS, you must promptly destroy all materials downloaded or otherwise obtained from this Site, as well as all copies of such materials, whether made under the Terms of Use or otherwise. TMS's right to any Submitted Content and Comments shall survive any termination of this Agreement.

L. General

This Agreement represents the complete agreement between the parties and supersedes all prior agreements and representations between them with regard to use of the Site. Headings used in these Terms of Use are for reference purposes only and in no way define or limit the scope of the section. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and the other terms of this Agreement shall remain in full force and effect. The failure of TMS to act with respect to a breach of this Agreement by you or others does not constitute a waiver and shall not limit TMS's rights with respect to such breach or any subsequent breaches. This Agreement shall be governed by and construed under Pennsylvania law without regard to conflicts of law provisions. Any action or proceeding arising out of or related to this Agreement or your use of this Site must be brought in the state or federal courts of Pennsylvania and you consent to the exclusive personal jurisdiction of such courts.

© 2011 The Minerals, Metals & Materials Society. All rights reserved.

