

## General Conditions of Sale and Delivery of Hempel Special Metals GmbH

### 1. Scope of application

- 1.1 The following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "Terms and Conditions") shall exclusively apply to the entire current and future business relationship between Hempel Special Metals GmbH (hereinafter referred to as "Hempel Special Metals") and the Purchaser regarding the purchase of movable goods ("Delivery Items").
- 1.2 With the order by the Purchaser, at the latest with the acceptance of the delivery of the delivery items, the Purchaser acknowledges the sole binding nature of these Terms and Conditions of Delivery. Should the Purchaser use conflicting, deviating or supplementary terms and conditions, their applicability to Hempel Special Metals is excluded, even if Hempel Special Metals does not expressly object to them.
- 1.3 Unless otherwise agreed, the Terms of Delivery in the version valid at the time of the Purchaser's order or in any case in the version last communicated to the Purchaser in text form shall apply as a framework agreement also for similar future contracts without Hempel Special Metals having to refer to them again in each individual case.
- 1.4 Individual agreements made with the Purchaser in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these Terms of Delivery. The contents of such agreements are, subject to proof to the contrary, governed by a written contract or written confirmation by Hempel Special Metals.

### 2. Offer and conclusion of contract

- 2.1 The offers of Hempel Special Metals are subject to change. By placing an order the Purchaser submits an offer to which he is bound for 3 (three) weeks from receipt by Hempel Special Metals. A contract is only concluded upon written confirmation of the order by Hempel Special Metals and is exclusively governed by the contents of the order confirmation and/or these Terms of Delivery.
- 2.2 Hempel Special Metals reserves all rights to its own sales documents (especially illustrations, weight and dimensional data) and samples. They may not be made available to third parties and must be returned to Hempel Special Metals immediately upon request.
- 2.3 If the ordered goods are to have a special quality which does not result from the standard product description or product designation or which requires special processing by Hempel Special Metals or third parties, the Purchaser shall provide Hempel Special Metals or third parties with the respective order with the corresponding quality descriptions, plans, sketches, current drawings, etc. etc. (hereinafter referred to as "Specifications") to the respective order. Such quality is only deemed to be agreed upon if Hempel Special Metals accepts it with the order confirmation.
- 2.4 Delivery dates and delivery periods are only binding if they have been confirmed in writing by Hempel Special Metals and the Purchaser has provided Hempel Special Metals in due time with all information, specifications, approved plans, documents, permits and releases necessary for the execution of the delivery and has paid any agreed down payments as agreed. Agreed time limits begin with the date of the order confirmation or declaration of acceptance. In the case of additional or extension orders placed at a later date, the deadlines shall be extended accordingly.
- 2.5 Unforeseeable, unavoidable and beyond the control of Hempel Special Metals ("force majeure"), such as in particular war, natural disasters, strikes, lockouts, epidemics, governmental measures or similar events release Hempel Special Metals from the obligation to deliver or perform for their duration plus a reasonable start-up period. Agreed time limits shall be extended by the duration of the disturbance plus an appropriate start-up time; the Purchaser will be informed of the occurrence of the disturbance in an appropriate manner. If the end of the disturbance cannot be foreseen or if it lasts longer than two months, each party is entitled to withdraw from the contract.
- 2.6 In the case of delivery items which Hempel Special Metals does not manufacture itself, but which are purchased from suppliers, the correct and timely delivery is subject to the reservation of self-supply.
- 2.7 The occurrence of a delay in delivery is determined by the statutory provisions. In any case a reminder by the buyer is necessary.
- 2.8 If the Purchaser is in default of acceptance or violates other obligations to cooperate, Hempel Special Metals is entitled, without prejudice to its other rights, to store the goods at the risk and expense of the Purchaser or to withdraw from the contract after the expiration of a reasonable period of grace granted to the Purchaser.
- 2.9 Hempel Special Metals may make partial deliveries, as far as they are reasonable for the buyer.

### 3. Delivery periods and dates

- 3.1 Delivery dates and delivery periods are only binding if they have been confirmed in writing by Hempel Special Metals and the Purchaser has provided Hempel Special Metals in due time with all information, specifications, approved plans, documents, permits and releases necessary for the execution of the delivery and has paid any agreed down payments as agreed. Agreed time limits begin with the date of the order confirmation or declaration of acceptance. In the case of additional or extension orders placed at a later date, the deadlines shall be extended accordingly.
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- 3.6 Hempel Special Metals may make partial deliveries, as far as they are reasonable for the buyer.

#### **4. Dispatch, transfer of risk, insurance**

- 4.1 The delivery of the goods to the Purchaser shall be EXW Hempel Special Metals Oberhausen (ICC INCOTERMS 2020), which is also the place of performance for the delivery and for any subsequent performance. Upon request and at the expense of the Purchaser the delivery items will be shipped to another destination (sale to destination).
- 4.2 Unless otherwise agreed, Hempel Special Metals is entitled to determine the type of shipment (in particular transport company, shipping route, packaging). The risk of accidental loss and accidental deterioration shall pass to the Purchaser upon delivery of the delivery item to the transport company or to the Purchaser itself. The handing over shall be deemed to be the same if the buyer is in default of acceptance.
- 4.3 The costs for packaging and shipping shall be borne by the Purchaser and will be shown separately on the invoice by Hempel Special Metals.
- 4.4 Transport insurance will only be taken out upon request and at the expense of the buyer.

#### **5. Prices, terms of payment**

- 5.1 The prices agreed between Hempel Special Metals and the Purchaser are (subject to clause 5.3) fixed prices, unless otherwise agreed by the parties.
- 5.2 The semi-finished products ordered from Hempel Special Metals will be invoiced according to the weight of the semi-finished products weighed by Hempel Special Metals.
- 5.3 If unforeseeable changes in costs occur after the conclusion of the contract, in particular due to collective bargaining agreements or fluctuations in material costs as a result of changes in the market price, Hempel Special Metals is entitled to adjust the agreed price accordingly at its reasonable discretion.
- 5.4 Prices of Hempel Special Metals are in Euro ex warehouse or factory excluding the respective statutory VAT, as well as packaging and shipping costs, which will be charged separately.
- 5.5 Hempel Special Metals is entitled to issue partial invoices for partial deliveries as defined in section 3.5.
- 5.6 Each invoice of Hempel Special Metals is due for payment without deduction within 30 days from receipt of the invoice. If the buyer does not pay within this period, he will be in default; otherwise the statutory provisions for the buyer's default will apply.
- 5.7 Payments by the buyer are only deemed to have been made when Hempel Special Metals can dispose of the amount.
- 5.8 If the Purchaser is in default of payment, Hempel Special Metals is entitled to charge default interest at the statutory rate. The assertion of further damages caused by delay remains unaffected.
- 5.9 The buyer is only entitled to set-off or to assert a right of retention if his counterclaim is undisputed or legally binding. In the event of defects in the delivery, the Buyer's counterclaims, in particular to retain a part of the purchase price which is reasonable in relation to the defect, shall remain unaffected.
- 5.10 Hempel Special Metals is, even in the course of an ongoing business relationship, entitled at any time to carry out deliveries in whole or in part only against advance payment or provision of security. Hempel Special Metals will declare a corresponding reservation at the latest with the order confirmation.
- 5.11 If after conclusion of the contract it becomes apparent (e.g. by filing for insolvency proceedings) that Hempel Special Metals' claim for payment of the purchase price is endangered by lack of ability to pay on the part of the Purchaser, Hempel Special Metals is entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract.

#### **6. Retention of title**

- 6.1 The delivered goods remain the property of Hempel Special Metals until full payment of all claims of Hempel Special Metals arising from the business relationship with the Purchaser. In case of a current account, the retained title shall be deemed to secure the balance due to Hempel Special Metals.
- 6.2 The buyer is entitled to sell the goods subject to retention of title ("products subject to retention of title") in the ordinary course of business. The Purchaser hereby assigns to Hempel Special Metals the claim from the resale; Hempel Special Metals hereby accepts this assignment. The Purchaser is revocably authorized to collect the claims assigned to Hempel Special Metals in trust for Hempel Special Metals in its own name. Hempel Special Metals may revoke this authorization as well as the authorization for resale if the Purchaser is in default with material obligations such as payment to Hempel Special Metals; in case of revocation Hempel Special Metals is entitled to collect the receivables itself.
- 6.3 The Purchaser is not entitled to pledge the products subject to retention of title, to assign them by way of security or to make any other dispositions that endanger the property of Hempel Special Metals.
- 6.4 If the Purchaser sells the products subject to retention of title after processing or transformation or after combination or mixing with other goods or otherwise together with other goods, the assignment of claims is agreed only to the extent of the part which corresponds to the price agreed between Hempel Special Metals and the Purchaser plus a safety margin of 10% of this price.

- 6.5 Any processing or transformation of the goods subject to retention of title by the buyer shall always be done for Hempel Special Metals. If the products subject to retention of title are processed together with other items, Hempel Special Metals acquires co-ownership of the new product in proportion of the value of the products subject to retention of title to the other processed items at the time of processing. For the new product resulting from processing the same applies as for the goods delivered under retention of title.
- 6.6 If the products subject to retention of title are combined or mixed with other goods, Hempel Special Metals acquires co-ownership of the new product in proportion of the value of the products subject to retention of title to the other goods at the time of combination or mixing. If the combining or mixing is done in such a way that the Purchaser's item is to be regarded as the main item, it is agreed that the Purchaser transfers proportional co-ownership to Hempel Special Metals. The joint ownership thus created will be kept by the Purchaser for Hempel Special Metals.
- 6.7 The Purchaser will at any time provide Hempel Special Metals with all requested information about the products subject to retention of title or about claims assigned to Hempel Special Metals hereunder.
- 6.8 The Purchaser has to inform Hempel Special Metals immediately and hand over the necessary documents about any access or claims of third parties to the products subject to retention of title. The Purchaser shall at the same time inform the third party of the retention of title of Hempel Special Metals. The costs of a defence against such access and claims are borne by the Purchaser.
- 6.9 The Purchaser is obliged to handle the products subject to retention of title with care for the duration of the retention of title.
- 6.10 If the realizable value of the securities exceeds the total claims of Hempel Special Metals to be secured by more than 10%, the buyer is entitled to demand release to that extent.
- 6.11 If the Purchaser is in default of material obligations, such as payment to Hempel Special Metals, Hempel Special Metals may, without prejudice to any other rights, take back the products subject to retention of title and, after rescission of the contract, realize them elsewhere for the purpose of satisfying due claims against the Purchaser. In the event of a demand for return, the Purchaser will grant Hempel Special Metals or its agents immediate access to the Retained Products and surrender them. If Hempel Special Metals demands surrender on the basis of this provision, this alone does not constitute a withdrawal from the contract.
- 6.12 In case of deliveries to countries outside the Federal Republic of Germany, where the above retention of title does not have the same security effect as in the Federal Republic of Germany, the Purchaser will take all necessary steps to immediately create appropriate security interests for Hempel Special Metals. The purchaser will cooperate in all necessary measures such as registration or publication.
- 6.13 Upon request of Hempel Special Metals the Purchaser is obliged to adequately insure the products subject to retention of title, to provide Hempel Special Metals with the appropriate proof of insurance and to assign the claims under the insurance contract to Hempel Special Metals.

## **7. Agreed quality, rights of the buyer in case of defects, duty to examine**

- 7.1 The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title, unless otherwise specified below.
- 7.2 The basis of Hempel Special Metals' liability for defects is the agreement made on the quality of the delivered goods.
- 7.3 The Purchaser is responsible for the correctness and feasibility of the specifications, including supplements, which he has prepared and handed over to Hempel Special Metals.
- 7.4 The Purchaser shall not be entitled to any warranty claims against Hempel Special Metals for defects resulting from a defect in the specifications supplied by the Purchaser or from an instruction given by the Purchaser for the execution of the delivery items.
- 7.5 Details in catalogues, price lists and other information material provided to the Purchaser by Hempel Special Metals as well as product descriptive details are no guarantees for a quality of the delivery item; any guarantees of quality must be expressly agreed in writing.
- 7.6 Deviations in quantity and weight customary in the trade within the limits of up to 10% of the ordered quantity are permissible. Deviations in quality/condition that are customary in the trade and are caused by the delivery item are also permissible.
- 7.7 Hempel Special Metals is not liable for defects which the Purchaser knew about at the time of the conclusion of the contract or did not know about due to gross negligence.
- 7.8 Any rights of the buyer due to defects of the delivery item require that the buyer has complied with his statutory obligations to examine and give notice of defects (§ 377 HGB). If a defect is discovered upon delivery, inspection or at a later date, Hempel Special Metals must be notified immediately in writing, quoting the invoice number. Hempel Special Metals has to be notified immediately in writing of obvious transport damages. Hidden defects must be reported to Hempel Special Metals in writing immediately after their discovery.
- 7.9 In case of any notice of defects Hempel Special Metals is entitled to inspect and test the delivery item complained about. For this purpose the Purchaser will grant Hempel Special Metals the necessary time and opportunity. Hempel Special Metals may also require the Purchaser to return the rejected delivery item to Hempel Special Metals.
- 7.10 Hempel Special Metals will remedy defects at its own choice by either removing the defect free of charge for the Purchaser or by delivering a defect-free product in replacement (together "subsequent performance"). The right of Hempel Special Metals to refuse subsequent performance in accordance with the legal requirements remains unaffected.
- 7.11 Hempel Special Metals will bear the transport, travel, labour and material costs necessary for the purpose of subsequent performance in accordance with the statutory provisions, if a defect actually exists.
- 7.12 If the notice of defect proves to be unjustified, the buyer is obliged to reimburse Hempel Special Metals for all expenses incurred in this connection (e.g. testing, travel or shipping costs), unless the lack of defect was not apparent to the buyer.

- 7.13 The subsequent performance does not include the removal of the defective delivery item nor the reinstallation, if Hempel Special Metals was not obliged to install the delivery item.
- 7.14 If the subsequent performance fails or if Hempel Special Metals has refused it, the buyer may, at its option and in accordance with the statutory provisions, withdraw from the contract, reduce the purchase price and/or claim damages or reimbursement of its expenses according to section 8. In case of an insignificant defect there is no right to withdraw from the contract.
- 7.15 Claims from supplier recourse are excluded if the defective delivery item has been further processed by the purchaser or another entrepreneur, for example by installation in another product.
- 7.16 Claims of the buyer for damages or reimbursement of expenses exist, even in the case of defects, only in accordance with clause 8 and are otherwise excluded.

## **8. Liability and compensation**

- 8.1 Hempel Special Metals is liable for breach of contractual and non-contractual obligations according to the statutory provisions, unless otherwise provided for in these terms of delivery.
- 8.2 Hempel Special Metals is liable for damages within the scope of strict liability for intent and gross negligence. In case of simple negligence Hempel Special is only liable, subject to legal limitations of liability, for
- (i) for damages resulting from injury to life, body and health
  - (ii) for damages resulting from the breach of an essential contractual obligation (i.e. an obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case the liability of Hempel Special Metals is limited to the compensation of the foreseeable, typically occurring damage.
- 8.3 The limitation of liability resulting from clause 8.2 shall also apply in case of breaches of duty by persons whose fault Hempel Special Metals is responsible for according to the statutory provisions.
- 8.4 The limitation of liability resulting from section 8.2 does not apply if Hempel Special Metals fraudulently concealed a defect or gave a guarantee for the quality of the delivered goods and for claims under the Product Liability Act.

## **9. Product liability**

- 9.1 The Purchaser shall indemnify Hempel Special Metals in the internal relationship against product liability claims of third parties to the extent that the Purchaser is responsible for the defect causing the liability.
- 9.2 Within the scope of his indemnification obligation the buyer has to reimburse expenses according to §§ 683,670 BGB (German Civil Code), which result from or in connection with claims of third parties.

## **10. Statute of limitations**

- 10.1 The general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- 10.2 The limitation periods of the law on the sale of goods shall also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases.
- 10.3 Buyer's claims for damages pursuant to Section 8.2 sentence 1 and sentence 2 (i) as well as under the German Product Liability Act shall be subject to the statutory limitation periods only.

## **11. General provisions**

- 11.1 The Purchaser may not assign his claims against Hempel Special Metals to third parties without the written consent of Hempel Special Metals.
- 11.2 If any provision of the contract and/or these Terms of Delivery is invalid in whole or in part, the validity of the remaining provisions shall not be affected.
- 11.3 Place of performance for all mutual claims is Oberhausen.
- 11.4 Exclusive place of jurisdiction for all disputes arising from the contractual relationship is Düsseldorf. However, Hempel Special Metals is entitled to sue the Purchaser at any other legal place of jurisdiction.
- 11.5 The laws of the Federal Republic of Germany shall apply, excluding the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).