

# Hempel Special Metals AG General Terms and Conditions of Purchase

1. **Scope of applicability**  
The overall current and future legal relationship between Hempel Special Metals AG and the Supplier concerning the purchase of movable property ("Delivery Items") is to be governed exclusively by the following General Terms and Conditions of Purchase. With acceptance of an order by the Supplier, but no later than with the delivery of the Delivery Items ordered, the Supplier acknowledges the exclusive binding force of these General Terms and Conditions of Purchase. Should the Supplier use contrary, divergent or supplementary Terms and Conditions, the applicability thereof toward Hempel Special Metals AG is excluded, even if Hempel Special Metals AG does not explicitly oppose them.
2. **Conclusion of a contract**
- 2.1 Purchase orders by Hempel Special Metals AG are binding only if given in written form and signed in a legally valid manner.  
Purchase orders given verbally or by telephone, supplements, changes and side agreement thereto are not binding and require written form to be effective.
- 2.2 Purchase orders by Hempel Special Metals AG constitute offers to buy and are to be accepted by the Supplier within five (5) business days from receipt of the order by means of a written acknowledgement of order. Once this period has expired, Hempel Special Metals AG is no longer bound to its offer to buy. Any acknowledgement of order that is received after said period or that deviates from the order is to be considered a new offer and must be accepted in writing by Hempel Special Metals AG in order to be valid. In no event shall Hempel Special Metals AG's silence be construed as its acceptance of an acknowledgement of order with different content.
3. **Shipment, packaging, transfer of risk**  
The following sub-clauses 3.1 to 3.4 will apply only if and to the extent the Parties have not effectively agreed upon the INCOTERMS 2000 or such INCOTERMS 2000 do not provide for corresponding and effective clauses.
- 3.1 The shipment of the Delivery Items must always be made to the respective address given by Hempel Special Metals AG in the order ("Delivery Address").
- 3.2 The risk of accidental loss or deterioration of the Delivery Items is to be borne by the Supplier until their arrival at the Delivery Address. The Delivery Address is the place of performance.
- 3.3 Hempel Special Metals AG may specify the packaging and shipping methods. Should Hempel Special Metals AG not do so, the Supplier will choose the most favorable packaging and shipping method best suited to each individual type of goods. In the event that this obligation is not observed in a culpable manner, all costs arising therefrom, such as replacement of damaged goods, additional freight costs, disposal and the like are to be borne by the Supplier. At Hempel Special Metals AG's request, all packaging is to be taken back by the Supplier at no charge.
- 3.4 On the date of shipment, a delivery notice containing the order number, quantity and precise description of the goods is to be sent to Hempel Special Metals AG. The material data sheet as well as a copy of the delivery slip in duplicate containing the same information as in sentence 1 is to be attached to the shipment itself. Otherwise Hempel Special Metals AG is entitled to refuse receipt of the shipment at the Supplier's expense.
4. **Delivery times and deadlines**
- 4.1 The delivery times and deadlines stated in the respective order are binding and must be observed by the Supplier.
- 4.2 Agreed upon delivery deadlines are considered to have been fulfilled if the Delivery Items have been received on the anticipated date at the Delivery Address (cf. sub-clause 3.1). The Delivery Items are always to be delivered with the associated written documents (e.g. material data sheets, test certificates, certificates of analysis, weight lists, insurance policies, bills of lading, etc.).
- 4.3 In the event that the agreed upon delivery deadlines are exceeded, Hempel Special Metals AG reserves the right to withdraw from the contract by means of a written declaration after the expiration of a reasonable grace period for subsequent performance. Moreover, the Supplier is liable under statutory regulations to compensate any damage caused by delay.
- 4.4 The Supplier agrees to inform Hempel Special Metals AG in writing immediately of any circumstances that might adversely affect timely delivery, giving the reason and the anticipated duration, as soon as such circumstances become apparent.
- 4.5 Should *force majeure*, the outbreak of war, natural disasters, strikes, lockouts, governmental measures and other unforeseeable serious events that are beyond the control of Hempel Special Metals AG and for which it is not responsible lead to the fact that the delivery cannot be received / delivered, Hempel Special Metals AG is released from the respective duty of acceptance for the duration of the disturbance and to the extent of its effect. Hempel Special Metals AG will make every effort in good faith to adjust its obligations to the altered circumstances. This may mean that even after removal of the disturbance, Hempel Special Metals AG may waive all or part of the remaining deliveries, or may demand continuation of the deliveries. In such event, the Supplier must store the Delivery Item at its own expense and risk.
5. **Partial delivery, excess or short deliveries, early deliveries**
- 5.1 Hempel Special Metals AG is not obligated to accept partial deliveries that have not been agreed upon. Hempel Special Metals AG is entitled to use partial deliveries without thereby acknowledging the contractual conformity of the delivery. If partial deliveries have been agreed upon, Hempel Special Metals AG may specify their sequence. For each individual shipment, the Supplier must provide a delivery notice on the date of shipment showing the order date, order number and quantity. Partial shipments and shipments of remaining balances are to be identified separately.
- 5.2 With respect to the condition, type, quantity and weight of a shipment, values recorded by Hempel Special Metals AG upon receipt of the goods are authoritative, unless the Supplier can prove that the receiving inspection was improper.
- 5.3 Hempel Special Metals AG is entitled to reject excess or short deliveries beyond customary tolerances. Shipments that deviate by more than 5% from the ordered quantity will in any event require the prior written consent of Hempel Special Metals AG.
- 5.4 Hempel Special Metals AG is not obligated to accept an early shipment. In any event, however, the Supplier will bear the storage costs and the risks until the due date.
6. **Payment terms**
- 6.1 Invoicing by the Supplier must in principle be in Swiss francs, or in the currency specified in the order. Such specification is binding on the Supplier.
- 6.2 The respective price shown in the purchase order (acknowledgement of order) for the shipment is a fixed price and is valid for that shipment, C.I.F. Delivery Address if not otherwise specified and agreed. It includes packaging, freight, duties, insurance and related costs. Value added tax is additional and is to be shown separately and as both a percentage and an amount on the acknowledgement of order.
- 6.3 The Supplier's invoice is to be submitted to Hempel Special Metals AG separately from the shipment, in duplicate and showing the order number and date. Should this information be missing or inaccurate, until it has been clarified, the conditions for delay in payment are not applicable.
- 6.4 Payment of the invoiced amounts must be made, at Hempel Special Metals AG's discretion, either within eight (10) days at a discount of 2%, or within thirty (30) days net, unless otherwise agreed. These terms start to run at the date the invoice is received by Hempel Special Metals AG, but in no event before completed delivery of the Delivery Items and presentation of the corresponding material data sheets to Hempel Special Metals AG. With respect to receipt of early shipments, the due date is determined in accordance with the agreed upon deadline.
- 6.5 In the event of defective shipment, Hempel Special Metals AG is entitled to withhold payment pending proper performance or other mutually agreeable settlement between the Parties.
- 6.6 Hempel Special Metals AG is entitled to offset claims by the Supplier against Hempel Special Metals AG with all claims by Hempel Special Metals AG against the Supplier.
- 6.7 The offsetting of claims by the Supplier against Hempel Special Metals AG is permitted only for undisputed claims or those that have become *res judicata*.
- 6.8 The Supplier may use its right of retention toward Hempel Special Metals AG only if the Supplier's counterclaim, upon which its right of retention is based, stems from the same contract and is either undisputed or has become *res judicata*.
7. **Reservation of title**  
Title to the delivered items is transferred to Hempel Special Metals AG upon completion of delivery. Any reservation of title on the part of the Supplier that is extended in time or in its scope is excluded.
8. **Notice of defects upon delivery**  
The obligation to give notice of defects pursuant to Art. 201 OR [Swiss Code of Obligations] is excluded. Hempel Special Metals AG is therefore entitled to give notice of defects throughout the entire warranty period pursuant to sub-clause 9.3 (statutory period of limitation).
9. **Hempel Special Metals AG's rights in the event of defects**
- 9.1 The quality of Delivery Items and the Supplier's obligation to meet claims for their quality are governed by Art. 191 OR for defects in title and by Art. 197 OR for defects of quality. The Supplier thereby warrants that it has legal and unencumbered title to the items to be delivered, and that the items to be delivered conform to the warranted and/or agreed upon characteristics and bear no physical defects or defects in title that negate or considerably decrease the value of the items or their suitability for their implied purpose.
- 9.2 The Supplier warrants in particular that the Delivery Items correspond to the state of the art in research and technology, and that they conform to all applicable legal regulations, including, but not limited to safety provisions, including all applicable EU guidelines.
- 9.3 In the event of a violation by the Supplier of its obligations pursuant to sub-clause 9.1, Hempel Special Metals AG's rights, including, but not limited to rescission of the contract, reduction of the purchase price and to damages are governed by the law. The statutory period of limitation is 18 months.
- 9.4 In addition to the statutory provisions (cf. sub-clauses 9.1 and 9.2) Hempel Special Metals AG is entitled, at the Supplier's expense
  - (i) to demand, within a reasonable grace period, the rectification of the defective items or their subsequent delivery (subsequent performance);
  - (ii) to itself rectify defects in Delivery Items or to exchange them for a substitute purchased elsewhere, if there is a particular urgency (e.g. imminent danger), if the subsequent performance has been unsuccessful or Hempel Special Metals AG cannot reasonably be expected to accept it, or the Supplier itself does not respond to Hempel Special Metals AG's demand for subsequent performance within a reasonable time (right to substitute performance).
- 9.5 Acceptance of the delivery and payment does not constitute acknowledgement of proper delivery.
10. **Product liability**
- 10.1 If the Supplier is responsible for product damage it has the obligation to compensate Hempel Special Metals AG for all damage that has resulted or to hold Hempel Special Metals AG harmless from claims for damages by third parties at first demand to the extent that it has found the cause to be within its control and organizational scope and would itself be liable to others.
- 10.2 The Supplier must take out adequate insurance against the risks associated with product liability for the items delivered by it and provide written evidence of such insurance coverage to Hempel Special Metals AG upon request.
11. **Final provisions**
- 11.1 Any transfer of the purchase order to third parties, including the assignment of any rights and claims arising therefrom is subject to the prior written consent of Hempel Special Metals AG (with the exception of the assignment of monetary claims on the part of the buyer). In the event of non-observance of this provision, Hempel Special Metals AG reserves the right to withdraw from the contract by means of a written declaration and/or to demand damages.
- 11.2 Amendments and supplements to the contract and/or these General Terms and Conditions of Purchase and any side agreements require written form. This applies as well to any modification of this requirement for written form.
- 11.3 Should any provision of this contract and/or these Terms and Conditions of Purchase be wholly or partially invalid, the validity of the remaining provisions will remain unaffected thereby. The Parties agree, in such case, to replace the invalid provision with a valid one that most closely corresponds to the economic purpose of the invalid provision.
- 11.4 Place of performance and exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is **8600 Dübendorf**. Hempel Special Metals AG is nevertheless entitled to file an action against the Supplier before any competent court in any other jurisdiction.
- 11.5 **Swiss substantive Law** applies to the exclusion of international private law, including, but not limited to the United Nations Convention on Contracts for the International Sale of Goods (CISG).