

Hempel Special Metals AG General Terms and Conditions of Sale and Delivery

1. **Scope of applicability**
The overall current and future legal relationship between Hempel Special Metals AG and the Buyer concerning the purchase of movable property ("Delivery Items") is to be governed exclusively by the following General Terms and Conditions of Sale and Delivery. With the placing of an order by the Buyer, but no later than with the receipt of the Delivery Items ordered, the Buyer acknowledges the exclusive binding force of these General Terms and Conditions of Sale and Delivery. Should the Buyer 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. **Offer and conclusion of a contract**
2.1 Hempel Special Metals AG's offers are subject to change without notice. By means of the respective purchase order, the Buyer submits an offer to which it is bound for three (3) weeks from the date of receipt at Hempel Special Metals AG. A contract will materialize only by means of the written acknowledgement of order from Hempel Special Metals AG and will be in accordance with the content of the acknowledgement of order and/or with these Terms and Conditions. Verbal agreements or consents require written confirmation by Hempel Special Metals AG to be valid.
2.2 Hempel Special Metals AG reserves all rights to its own sales documents (in particular illustrations, weight and measurement information) and samples. They must not be made available to third parties and are to be returned to Hempel Special Metals AG immediately upon request.
2.3 Acknowledgements of orders from Hempel Special Metals AG are confidential and may be open to inspection only by persons who actually process these acknowledgements of orders on the part of the Buyer.
2.4 To the extent that the Delivery Items ordered are to possess particular qualities not resulting from the standard product description or product identification, or that require special processing by Hempel Special Metals AG or third parties, the Buyer must attach to the respective purchase order the corresponding description of the qualities, plans, sketches, current drawings, etc. (hereinafter: "Quality Specifications").
3. **Delivery times and deadlines**
3.1 Delivery times and deadlines are binding only if they have been confirmed in writing by Hempel Special Metals AG and the Buyer has made available to Hempel Special Metals AG in a timely manner all information, Quality Specifications, released plans, documents, approvals and releases required for the delivery, and has paid any agreed upon deposits in accordance with the contract. Agreed upon delivery times start to run at the date of the acknowledgement of order or confirmation of receipt. For supplementary or extended orders placed at a later date, the delivery times will be extended accordingly.
3.2 Delivery times are deemed to have been observed once the goods have been handed over for shipment.
3.3 Events that are unforeseeable, unavoidable and beyond the control of Hempel Special Metals AG and for which Hempel Special Metals AG is not responsible, such as *force majeure*, war, natural disasters, strikes, lockouts, governmental measures or similar occurrences release Hempel Special Metals AG for their duration from the obligation of timely delivery or performance. Agreed upon periods will be extended by the duration of the disturbance; the Buyer is to be suitably informed of the occurrence of the disturbance. Should the end of the disturbance not be foreseeable or should it last longer than two (2) months, each Party is entitled to withdraw from the contract.
3.4 For Delivery Items which Hempel Special Metals AG does not itself manufacture, but rather purchases from sub-suppliers, delivery thereof is subject to proper and timely supply to Hempel Special Metals AG by its sub-suppliers.
3.5 Should Hempel Special Metals AG's deliveries be delayed, the Buyer is entitled to withdraw only if Hempel Special Metals AG is responsible for the delay and a reasonable grace period set by the Buyer for delivery has passed unsuccessfully.
3.6 Should the Buyer be in default of acceptance, or should it violate other duties of cooperation, Hempel Special Metals AG is entitled, notwithstanding its other rights, to appropriately store the Delivery Items at the risk and expense of the Buyer or to withdraw from the contract.
3.7 Hempel Special Metals AG may effect partial deliveries when justified by the circumstances, if these are reasonable for the Buyer.
4. **Shipment, transfer of risk, insurance**
The following sub-clauses 4.1 to 4.3 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.
4.1 Unless specified by the Buyer, shipment is to be effected by reasonable shipment method in the customary packaging.
4.2 The risk is transferred to the Buyer with the handing over of the Delivery Items to the carrier or the Buyer itself. Should the transfer or shipment be delayed for reasons that are the responsibility of the Buyer, the risk is transferred on the day the Buyer is notified of the shipment's readiness.
4.3 Costs for packaging and shipment are to be borne by the Buyer and will be shown by Hempel Special Metals AG separately on the invoice.
4.4 Cargo insurance will be arranged exclusively at the Buyer's request and at its expense.
5. **Prices, payment terms**
5.1 The prices agreed upon between Hempel Special Metals AG and the Buyer are (subject to sub-clause 5.3) fixed prices, unless the Parties have agreed otherwise.
5.2 Invoicing of semi-finished goods ordered from Hempel Special Metals AG will be according to the weight of such goods as weighed by Hempel Special Metals AG unless some other invoicing basis has been agreed upon (e.g. per piece or theoretical weight).
5.3 In the event that after the signing of the contract unforeseeable increases in materials and labor costs to Hempel Special Metals AG have arisen, Hempel Special Metals AG is entitled, in its reasonable discretion, to a corresponding increase in the agreed upon price.
5.4 All Hempel Special Metals AG prices are in Swiss francs, if not otherwise specified in order acknowledgement, ex distribution warehouse or ex works, but exclusive of the packaging and shipping costs (incl. duties), which can be charged separately. Applicable statutory value added tax is charged separately.
5.5 Hempel Special Metals AG is entitled to submit partial invoices for partial shipments within the meaning of sub-clause 5.7.
5.6 Each invoice from Hempel Special Metals AG will be due for payment within thirty (30) days of receipt of the invoice without deduction. Upon unsuccessful expiry of this time period, default has occurred automatically and without request to Buyer to make payment. Payments by the Buyer are deemed to have been effected only when Hempel Special Metals AG has access to the sum.
5.7 In the event the Buyer is in default of payment, Hempel Special Metals AG is entitled to demand default interest in the statutory amount and to refuse further shipments until all outstanding amounts, including default interest, are paid. The assertion of additional default damages remains unaffected.
5.8 The Buyer is entitled to offset sums only if its counterclaim is undisputed or has become *res judicata*.
5.9 The Buyer is permitted to assert a right of retention only if its counterclaim stems from the same contract and is either undisputed or has become *res judicata*.
5.10 If after the signing of the contract Hempel Special Metals AG becomes aware of the risk of insufficient ability to pay on the part of the Buyer, Hempel Special Metals AG is entitled to make outstanding deliveries only against prepayment or the provision of security. Should the prepayments or provision of security not have been made by the expiration of a reasonable grace period, Hempel Special Metals AG may withdraw from all affected contracts in each case either partially or wholly. Hempel Special Metals AG reserves the assertion of additional rights.
6. **Reservation of title**
6.1 The Delivery Items remain the property of Hempel Special Metals AG until full payment of all receivables due to Hempel Special Metals AG arising out of the business relationship with the Buyer.
6.2 For current accounts, the reserved title will serve to secure Hempel Special Metals AG's claim to the outstanding balance.
6.3 The Buyer is permitted to sell the Delivery Items that are under reservation of title ("Reserved Products") only in the course of regular business transactions. The Buyer now agrees in advance to assign all claims from the resale to Hempel Special Metals AG with Hempel Special Metals AG now accepting such assignment in advance. The Buyer is authorized, subject to revocation, to collect the claims assigned to Hempel Special Metals AG as a trustee for Hempel Special Metals AG in its own name. Hempel Special Metals AG may revoke this authority, as well as the right to resale, if the Buyer is in default with essential contractual obligations, such as, for example, its payment to Hempel Special Metals AG. In the event of a revocation, Hempel Special Metals AG is entitled to collect the claims itself. The Buyer is not entitled to pledge the Reserved Products, to transfer the title thereof as security or to make other dispositions that may endanger the property of Hempel Special Metals AG. Should the Buyer sell the Reserved Products after processing or conversion or after combination or commingling with other goods or otherwise together with other goods, then the assignment of claims is valid only up to the amount of the portion representing the price agreed upon between Hempel Special Metals AG and the Buyer, plus a security margin of 10% of this price.
6.4 Processing or conversion of the Reserved Products by the Buyer is always to be carried out on behalf of Hempel Special Metals AG.
If the Reserved Products are processed with other items, Hempel Special Metals AG acquires co-ownership in the new items in proportion to the value of the Reserved Products to the other processed items at the time of the processing. In all other respects, the new products produced through the processing are subject to the same conditions as the Delivery Items delivered under the reservation of title.
6.5 Should the Reserved Products be combined or commingled with other items, Hempel Special Metals AG acquires co-ownership in the new items in proportion to the value of the Reserved Products to the other items at the time of the combination or commingling. Should the combination or commingling occur in such a way that the Buyer's item appears to be the main item, it is deemed to have been agreed that the Buyer is transferring co-ownership to Hempel Special Metals AG proportionately. The co-ownership thus produced is to be held in custody by the Buyer for Hempel Special Metals AG.
6.6 The Buyer will provide to Hempel Special Metals AG at any time all requested information on the Reserved Products or on claims that have been assigned to Hempel Special Metals AG hereunder. Access or claims by third parties to Reserved Products must be reported by the Buyer immediately to Hempel Special Metals AG, along with sending of the necessary documentation. At the same time, the Buyer will instruct the third party of Hempel Special Metals AG's reservation of title. The costs of a defense against such access and claims is to be borne by the Buyer.
6.7 The Buyer is obligated to treat the Reserved Products with care for the duration of the reservation of title.
6.8 Should the realizable value from the security exceed the total of Hempel Special Metals AG's claims to be secured by more than 10 %, the Buyer is entitled to demand release to such extent. Should the Buyer be in default with essential contractual obligations such as, for example, payment to Hempel Special Metals AG, then Hempel Special Metals AG, notwithstanding other rights, may take back the Reserved Products and, after withdrawing from the contract, may use them for other purposes to satisfy its claims against the Buyer which are due and payable. In the event of a request for the surrender of possession, the Buyer will immediately grant Hempel Special Metals AG or Hempel Special Metals AG's agent access to the Reserved Products and surrender these. Should Hempel Special Metals AG demand the surrender based on this provision, this alone shall not be construed as withdrawal from the contract.
6.9 The Buyer will give all necessary declarations and signatures that are necessary and expedient for the legal effectiveness of the aforementioned reservation of title. In particular, the Buyer now declares in advance its consent to the entry of the reservation of title in the Register of reservations of title, and agrees to provide any additional declarations that are necessary or expedient at Hempel Special Metals AG's first request.
6.10 Upon Hempel Special Metals AG's request, the Buyer has to take out adequate insurance for the Reserved Products, to provide Hempel Special Metals AG with the proof of such insurance coverage, and to assign claims from the insurance policy to Hempel Special Metals AG.
7. **Quality, Buyer's rights in the event of defects, duty to examine**
7.1 Upon transfer of risk, the Delivery Item must exhibit the agreed upon quality. Such qualities are exclusively governed by the specific written agreements between the Parties regarding properties, features and performance characteristics of the Delivery Item (warranted characteristics within the meaning of Art. 197 Par. 1 OR [Swiss Code of Obligations]). Any warranty for the value or suitability for its implied purpose is expressly excluded.
7.2 In the event of processing according to the warranted characteristics drawn up and released by the Buyer, the quality is measured exclusively according to these released and warranted characteristics and any additional specific written agreements drawn up between the Parties regarding properties, features and performance characteristics of the Delivery Item ("Quality Agreement"). For defects in the Delivery Item that are based on Quality Specifications released by the Buyer, the Buyer has no warranty claims against Hempel Special Metals AG. In particular, the Buyer is responsible for the accuracy and usability of all Quality Specifications and supplements thereto prepared by the Buyer and given and released to Hempel Special Metals AG.
7.3 Information in catalogs, price lists and other informational material given to the Buyer by Hempel Special Metals AG, as well as product description information are in no way to be understood as warranties of a particular quality of the Delivery Item; such quality warranties must be agreed upon explicitly in writing.
7.4 The usual deviations in quantity and weight of up to 10% of the ordered quantity are permissible. Deviations in quality/condition are also permissible if they are a function of the Delivery Item.
7.5 The Buyer's rights in the event of defects in the Delivery Item presuppose that it has examined the Delivery Item upon delivery and has sent a written report of defects to Hempel Special Metals AG without delay, but no later than two (2) weeks from delivery, stating the invoice number; in any event, obvious transport damage is to be reported in writing to Hempel Special Metals AG without delay. Hidden defects must be reported in writing to Hempel Special Metals AG immediately upon their discovery.
7.6 For any notice of defects, Hempel Special Metals AG has the right to examine and test the Delivery Item that is the subject of the complaint. The Buyer will provide Hempel Special Metals AG the necessary time and opportunity for this purpose. Hempel Special Metals AG may also demand from the Buyer to send back the Delivery Item that is the subject of the complaint to Hempel Special Metals AG at Hempel Special Metals AG's expense.
7.7 Defects are to be remedied by Hempel Special Metals AG, at its own discretion, either by repair of the defect free of charge to the Buyer, or substitute delivery of a new item free from defects (jointly "Subsequent Performance"). Hempel Special Metals AG may, however, refuse Subsequent Performance if this would cause disproportionate effort and/or costs.
7.8 Hempel Special Metals AG will assume all forwarding charges, infrastructure, labor and materials costs incurred within the scope of Subsequent Performance. If the complaint regarding a defect proves to be unjustified by reason of intent or gross negligence and if this was recognizable to the Buyer before the complaint was lodged, Buyer must compensate Hempel Special Metals AG for all expenses incurred by it in connection therewith (for example travel or shipping costs).
7.9 If the Subsequent Performance does not succeed, if the acceptance thereof may not be reasonably expected from Buyer, or if Hempel Special Metals AG has refused it pursuant to sub-clause 7.5, the Buyer may withdraw from the contract. In such case, the Buyer will be reimbursed for the purchase price.
7.10 The statutory period of limitation for the Buyer's rights in the event of defects is twelve (12) months from the delivery of the Delivery Item to the Buyer.
8. **Liability and damages**
8.1 Hempel Special Metals AG's liability for defects is limited to Subsequent Performance pursuant to sub-clause 7.7. Any further liability for defects or other contractual violations (e.g. reduction of purchase price, damages for indirect and consequential damage, for delayed delivery, etc.) is explicitly excluded in the scope permitted by law.
8.2 The Buyer is obligated to take reasonable measures to prevent and mitigate damage.
9. **Product liability**
Should the Buyer sell the Delivery Item, it must release Hempel Special Metals AG within their relations *inter se* from product liability claims by third parties to the extent that it is responsible for the faults that trigger the liability.
10. **General provisions**
10.1 The Buyer may not assign its claims against Hempel Special Metals AG to third parties without Hempel Special Metals AG's written consent.
10.2 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.
10.3 Should any provision of this contract and/or these Terms and Conditions of Sale and Delivery 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.
10.4 Place of performance for all mutual claims is **8600 Dübendorf (Switzerland)**.
10.5 The exclusive place of jurisdiction for all disputes arising out of the contractual relationship is **8600 Dübendorf (Switzerland)**. Hempel Special Metals AG is nevertheless entitled to file an action against the Buyer before any competent court in any other jurisdiction.
10.6 Exclusively **Swiss substantive Law** applies to contracts signed with Hempel Special Metals AG, 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).