



General Terms and Conditions of Purchase

of

Hempel Special Metals

1. Scope

The following General Terms and Conditions of Purchase ("Purchase Terms") shall apply exclusively to the entire current and future relationship between Hempel Special Metals GmbH (herein after referred to as „Hempel Special Metals“) and the Supplier with respect to movable goods ("Delivery Items"). With the acceptance of an order by Supplier, at the latest upon the delivery of the ordered Delivery Items, Supplier accepts these Purchase Terms as exclusively binding. In the case that Supplier uses conflicting, deviating or supplementary terms and conditions, their applicability shall be excluded, even if Hempel Special Metals does not expressly object to these Purchase Terms.

3.1 Shipment of the Delivery Items has to be carried out to the address ("Delivery Address") quoted in the relevant order.

3.2 The risk of the accidental loss or deterioration of the Delivery Items shall be borne by Supplier until it arrives at the Delivery Address. The Delivery Address shall be the place of performance.

3.3 Hempel Special Metals may stipulate the type of packaging and shipping. Otherwise, Supplier shall be obliged to select the shipping and packaging option which is least expensive and most suitable for the concerned Delivery Items. All costs like replacement of damaged goods, additional freights, disposal etc. resulting from culpable non observance of this obligation shall be borne by Supplier. All packaging shall at any time be taken back by Supplier free of charge upon Hempel Special Metals request.

2. Conclusion of Contract

2.1. Orders made by Hempel Special Metals shall only be binding if they are made in writing and are signed in a legally effective way. Oral orders or orders made by telephone shall not be binding and shall only be valid upon written confirmation. Equally, supplements, modifications of the orders as well as subsidiary agreements are required to be in writing in order to be valid.

3.4 At the day of dispatch of shipment Supplier has to send to Hempel Special Metals a dispatch note stating the purchase order, quantity and the specific order for goods. Supplier shall attach to every shipment the certificate of material and the delivery note in duplicate with the same contents as stated in sentence 1. Otherwise, Hempel Special Metals may refuse the acceptance of shipment at the expense of Supplier.

2.2. Orders made by Hempel Special Metals constitute offers for purchase and must be accepted by Supplier in writing by an order confirmation within five working days after the receipt of the order. After the expiry of this time period Hempel Special Metals shall not be bound to this purchase offer anymore. An order confirmation that arrives after the expiry date or deviates from the contents of the order made by Hempel Special Metals shall constitute a new offer and must be accepted by Hempel Special Metals in writing. Under no circumstances shall silence on the part of Hempel Special Metals be deemed as acceptance of a deviating order confirmation.

4. Delivery Periods and Deadline

3. Shipment, packaging, passage of risk

The following Sections 3.1 to 3.4 will only apply, if the parties did not effectively agree upon INCOTERMS 2002 or if INCOTERMS 2002 do not contain a relevant and effective provision.

4.1 Delivery deadlines and delivery periods mentioned in the respective order shall be binding and have to be observed by Supplier.

4.2 Agreed dates of delivery are complied with if the Delivery Items have been received at the agreed time at the Delivery Address (see Section 3.1). Delivery Items have to be delivered with the respective written documents (e.g. certificate of material, certificate of the plant, data of analyses, date lists, certificate of insurance, bill of lading etc.).

4.3 In the event that the agreed delivery dates are exceeded, Hempel Special Metals reserves the right to cancel the contract in writing after

- expiry of a reasonable period of grace. Moreover, Supplier shall be liable for damages caused by any delay pursuant to the statutory provisions.
- 4.4 Supplier is obliged to inform Hempel Special Metals immediately in writing about all circumstances (including their cause and anticipated duration) which could affect timely delivery as soon as they become evident.
- 4.5 If events which are unforeseeable, unavoidable and lie beyond the sphere of influence of Hempel Special Metals and for which Hempel Special Metals does not bear responsibility, such as Acts of God, war, natural disasters, strike, lockout, official measures or similar incidents, having the result that deliveries cannot be accepted/delivered, Hempel Special Metals shall for the duration and to the extent of the consequences of such event be released from its contractual obligation to accept deliveries. Hempel Special Metals is in this case obliged to adjust its obligations according to the principles of good faith. This could mean that - even after the disturbance has ended - Hempel Special Metals may elect to waive the remaining deliveries in total or in part or it may request the continuation of delivery. In such a case the Supplier is obliged to put the Delivery Items at its expenses and risk into storage.
- 5. Partial, additional, short and premature deliveries**
- 5.1 Hempel Special Metals is not obliged to accept partial deliveries which are not agreed between the parties. Hempel Special Metals is entitled, however, to use partial deliveries without accepting their conformity with the contract. If partial deliveries are agreed between the parties, Hempel Special Metals may determine the order of the partial deliveries. At the day of the shipment the Supplier has to send a delivery note to Hempel Special Metals stating the day of the order, purchase order number and the quantity of the delivery. Partial and outstanding deliveries have to be identified as such.
- 5.2 Quality, kind, quantity and weight of the Delivery Items shall be deemed such as determined on Hempel Special Metals' inspection on receipt of any delivery, unless Supplier proves that such inspection was faulty.
- 5.3 Hempel Special Metals has the right to reject additional and short deliveries which are not within the customary range of tolerance. Deliveries which deviate more than 5 % from the ordered quantity need the prior written consent of Hempel Special Metals.
- 5.4 Hempel Special Metals is not obliged to accept any premature deliveries. The Supplier shall at any rate bear the storage costs and the risk until the due date.
- 6. Terms of payment**
- 6.1 The Supplier shall issue the invoices in EURO or in the currency determined by the order. The determination of the currency is binding for the Supplier. Hempel Special Metals will fulfill its payment obligations exclusively in EURO.
- 6.2 The price indicated in the order (order confirmation) for the delivery is a fixed price and shall be free Delivery Address. The price shall include packaging, freight, insurance and other ancillary costs. VAT will be charged additionally and will be shown separately on the order confirmation with regard to percentage and amount.
- 6.3 Supplier's invoice shall be sent separately to Hempel Special Metals in duplicate indicating the order number and date of the order. If these particulars are missing or incorrect, defaults of payment is excluded until these details are clarified.
- 6.4 Subject to the choice of Hempel Special Metals, the payment of the invoiced amounts shall be made within 8 days with a discount of 3 % or within 30 days net, provided that nothing else has been agreed. These time limits shall commence on the day on which the invoice is received by Hempel Special Metals but shall not begin before receipt of the Delivery Items and the corresponding certificate of material by Hempel Special Metals. In the event of accepting premature deliveries the date of payment shall be subject to the agreed date of delivery.
- 6.5 In the event of incorrect deliveries, Hempel Special Metals is entitled to withhold payments until due performance or other amicable settlement between the parties.
- 6.6 Hempel Special Metals is entitled to apply all claims which Supplier has against Hempel Special Metals against any claims against Supplier to which Hempel Special Metals is entitled.
- 6.7 Supplier is only entitled to set-off if its counterclaim is uncontested or has been finally adjudicated.
- 6.8 Supplier is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.
- 7. Retention of title**
- Title to Delivery Items shall pass to Hempel Special Metals upon the full payment of the purchase price by Hempel Special Metals. Any extended or expanded retention of title by Supplier is excluded.
- 8. Notification of defects at delivery**
- Hempel Special Metals shall inspect the purchased Delivery Items for possible defects or deviation from quality after delivery without undue delay according to the requirements of its ordinary course and conduct of business. Hempel Special Metals shall notify Supplier of obvious defects without undue delay after receipt of the delivery, but not later than two

weeks following delivery. Hidden defects must be notified without undue delay upon their discovery.

9. The rights of Hempel Special Metals in case of defects

9.1 The quality of the Delivery Items and the warranty obligation of the Supplier for their quality shall be governed by the individual agreements between the parties. Supplier shall deliver the Delivery Items free of defects of quality and title accordingly. The Delivery Items shall comply with the latest state of the art in scientific and technical knowledge and all applicable statutory regulations, in particular safety regulations and all applicable EU regulations.

9.2 In the event that Supplier is in breach of his duties according to Section 9.1 the rights of Hempel Special Metals to subsequent performance, cancellation, reduction of purchase price, damages or the reimbursement of expenses as well as the applicable limitations period shall be governed by the statutory provisions.

9.3 In addition to the statutory provisions (cf. Section 9.2), Hempel Special Metals shall be entitled at Supplier's expense to remedy defects of Delivery Items itself or to exchange them with replacements procured from other sources if it is a case of special urgency (e.g. imminent danger), if the subsequent performance has failed or would otherwise be unreasonable for Hempel Special Metals, or if the Supplier himself has not complied with the request of Hempel Special Metals for subsequent performance within a reasonable period of time.

9.4 The acceptance of delivery and payment shall not be deemed as acknowledgement of correct delivery.

10. Product liability

10.1 Insofar as Supplier has caused a product defect within his area of control and organisation and for which he is liable himself in relation to third parties, he shall indemnify Hempel Special Metals upon first demand against all claims of third parties or compensate Hempel Special Metals for all damages.

10.2 Supplier shall be obliged to insure himself against the risks associated with the product liability for the Delivery Items up to a reasonable amount and to furnish Hempel Special Metals upon request with evidence of such insurance cover in writing.

11. Final provisions

11.1 The transfer of an order to third parties, including the assignment of the rights and obligations arising hereunder, shall be subject to Hempel Special Metals prior written consent (with the exception of the assignment of

pecuniary claims of the purchaser). Hempel Special Metals reserves the right in case of non-compliance with this provision to cancel the contract by written notice and/or demand damages.

11.2 Amendments of and supplements to the contract and/or these Purchase Terms and any side agreements must be in writing. The same shall apply to the amendment of this written form requirement.

11.3 If a provision of this contract and/or these Purchase Terms is fully or partially invalid, the validity of the remaining provisions shall remain unaffected thereby. In such case, the parties undertake to replace the invalid provision by the valid provision coming closest to the commercial purpose of the invalid provision.

11.4 Exclusive venue for all disputes arising under the contractual relationship shall be Düsseldorf. Hempel Special Metals shall be entitled, however, to sue Supplier at any other court having statutory jurisdiction.

11.5 The laws of the Federal Republic of Germany shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).