



General Terms and Conditions of Sale and Delivery

of

Hempel Special Metals

1. Scope

All current and future transactions between Hempel Special Metals GmbH (hereinafter referred to as "Hempel Special Metals") and the Customer concerning the Sale and Delivery of movable goods ("objects of delivery") shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as the "Terms of Delivery"). The Terms of Delivery shall be accepted by Customer by the placing of an order or by the receipt of the objects of delivery at the latest. The application of Customer's conflicting and supplementary terms of delivery shall be excluded, even if they are not expressly objected to by Hempel Special Metals.

2. Offer and Conclusion of Contract

2.1 Offers by Hempel Special Metals shall be non-binding. By the placing of an order the Customer makes an offer to, which he is bound for 3 weeks after the receipt of Hempel Special Metals. A contract shall not become effective until it has been expressly confirmed by Hempel Special Metals in a written confirmation of order. The contract shall be governed exclusively by the contents of the confirmation of order and/or these Terms of Delivery. Oral agreements or promises are only valid if they have been confirmed by Hempel Special Metals in writing.

2.2 Hempel Special Metals retains all rights in the sales documentation (in particular pictures, data on weight and size) and the samples. These items must not be made available to third parties and must be returned to Hempel Special Metals without undue delay on demand.

2.3 Customer shall attach to every order a detailed description concerning the quality specifications of the object of delivery, blueprints, drawings, actual pictures etc. (hereinafter referred to as "Quality Specifications") if the object of delivery shall have a special quality which does not arise from the standard product description or name of the product.

3. Delivery Periods and Deadlines

3.1 Delivery deadlines and delivery periods are only binding if they have been confirmed by Hempel Special Metals in writing and Customer has communicated or provided Hempel Special Metals in a timely manner with all of the information, Quality Specifications, released blueprints, documentation, approvals and releases required for the performance of such delivery and Customer has paid any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall commence on the date of the confirmation of the applicable order. In the event of additional or supplementary con-

tracts, the delivery periods shall be extended accordingly.

3.2 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, shall release Hempel Special Metals for the duration of such event from its obligation to make timely delivery or perform timely. Periods agreed upon shall be extended by the length of such disturbance; Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.

3.3 With regard to objects of delivery which Hempel Special Metals does not produce itself, the correct and timely supply of Hempel Special Metals itself by its own suppliers shall be reserved.

3.4 If deliveries by Hempel Special Metals are delayed, Customer shall only be entitled to rescind the contract if Hempel Special Metals is responsible for the delay and a reasonable grace period set by Customer has expired unsuccessfully.

3.5 Should Customer be in default of the acceptance of delivery or should it be in breach of any other obligations to cooperate, Hempel Special Metals shall be entitled to reasonably store the object of delivery at Customer's risk and expense or to rescind the contract.

3.6 Hempel Special Metals may make partial deliveries for good reason if this is reasonable for Customer.

4. Shipment, Passage of Risk, Insurance

The following Sections 4.1 to 4.3 will only apply, if the parties did not effectively agree upon INCOTERMS 2002 or if INCOTERMS 2002 do not contain a relevant and valid provision.

4.1 In the absence of any other instruction by Customer, shipment shall be made by Hempel Special Metals at its discretion using a reasonable method of shipment in the customary packaging.

4.2 The risk shall pass to Customer upon delivery of the object of delivery to the transport company or delivery of the object of delivery to Customer itself. Should the delivery or shipment be delayed on grounds for which Customer bears responsibility, the risk shall pass to Customer on the date of the notification to Customer of the readiness of the object of delivery for shipment.

4.3 Costs regarding packaging and shipment shall be paid by Customer and will be listed separately on the invoice.

- 4.4 Insurances shall be taken out only upon request and at the expense of Customer.
- 5. Prices, Terms of Payment**
- 5.1 The agreed prices between Hempel Special Metals and Customer shall be fixed prices (subject to Section 5.3), except when otherwise stipulated by the parties.
- 5.2 The invoicing of the semi-finished products ordered from Hempel Special Metals shall be based on the weight of the semi-finished products as established by Hempel Special Metals.
- 5.3 If Hempel Special Metals has to bear an unforeseeable increase in costs with regard to material and labour expenses after conclusion of the contract, Hempel Special Metals shall be entitled to increase the agreed price accordingly at its reasonable discretion.
- 5.4 All prices of Hempel Special Metals are quoted in Euro ex distribution centre or ex works. They are exclusive of the statutory VAT and costs for packaging and shipment which will be charged separately.
- 5.5 Hempel Special Metals shall be entitled to issue separate invoices for partial deliveries in terms of Section 3.6.
- 5.6 Each invoice of Hempel Special Metals shall be due for payment without any deductions within 30 days after the receipt of the invoice. If this period for payment lapses unsuccessfully Customer shall be in default.
- Payments by Customer shall only be deemed to have been effected once Hempel Special Metals is able to dispose of such payment.
- 5.7 In the event that Customer is in default, Hempel Special Metals shall be entitled to demand default interest in the applicable statutory amount. The assertion of a claim for further damages due to the default shall remain unaffected.
- 5.8 Customer is only entitled to a set off if its counterclaim is uncontested or has been finally adjudicated.
- 5.9 Customer 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.
- 5.10 If Hempel Special Metals becomes aware of the risk of Customer's (financial and other) inability to perform the contract after the conclusion of the contract, Hempel Special Metals shall be entitled to make any outstanding deliveries dependent on prepayment or the provision of security. If such prepayments or securities have not been rendered even after the expiration of a reasonable grace period granted by Hempel Special Metals, Hempel Special Metals may, notwithstanding any further rights, partially or totally rescind any individual or all of the contracts between the parties concerned. Hempel Special Metals shall be entitled to assert any further rights.
- 6. Retention of Title**
- 6.1 The objects of delivery shall remain the property of Hempel Special Metals until any and all claims of Hempel Special Metals arising under its business relationship with Customer have been fully paid.
- 6.2 In the case of current accounts, such retention of title shall be security for any balance of unpaid invoices arising from the business relationship between the parties to which Hempel Special Metals is entitled.
- 6.3 Customer shall only be allowed to sell the objects of delivery subject to retention of title ("Retained Products") in the course of Hempel Special Metals normal and proper business to third parties. Customer is not entitled to pledge the Retained Products, grant liens on them or make other dispositions endangering Hempel Special Metals title to such Retained Products. Customer hereby assigns to Hempel Special Metals its claim for the proceeds from any onward resale of the Retained Products, and Hempel Special Metals hereby accepts such assignment. Should Customer sell the Retained Products after processing or transformation or joining or blending of such Retained Products with other goods or together with other goods, the assignment of any claims for the proceeds shall only be agreed in the amount of the portion equivalent to the price agreed between Hempel Special Metals and Customer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to Hempel Special Metals in its own name. Hempel Special Metals may revoke such authorization and the right to resell the Retained Products if Customer is in default of the performance of material obligations such as making payment to Hempel Special Metals; in the event of such revocation, Hempel Special Metals shall be entitled to collect the respective claim itself.
- 6.4 Any processing or transformation of the Retained Products by Customer shall always be for Hempel Special Metals. If Retained Products are processed with other goods, Hempel Special Metals shall acquire joint ownership of the new goods in the ratio of the value of the Retained Products to the other processed goods at the time of processing. To the new goods created by way of processing, the same provisions applicable to the Retained Products shall apply incidentally.
- 6.5 Should the Retained Products be joined or blended with other goods, Hempel Special Metals shall acquire joint ownership of the new goods in the ratio of the value of the Retained Products to the other goods at the date of joining or blending. Should the joining or blending of the goods occur in such manner that Customer's good has to be viewed as the main goods, it shall be deemed to have been agreed that Customer shall assign proportionate joint ownership to Hempel Special Metals. Customer shall hold the joint ownership created in such manner in custody for Hempel Special Metals.
- 6.6 Customer shall provide Hempel Special Metals at all times with all desired information concerning the Retained Products or claims assigned to Hempel Special Metals under this contract. Attachments of or claims by third parties to the Retained Products shall immediately be reported to Hempel Special Metals by Customer and be accompanied by the necessary documents. Customer shall at the same time advise the third party of Hempel Special Metals retention of title. The costs of a defense against any such attachments and claims shall be borne by Customer.
- 6.7 Customer is obliged to treat the Retained Products with care for the term of the retention of title.
- 6.8 Should the realizable value of the securities exceed all

- of Hempel Special Metals claims which are to be secured by more than 10 %, Customer shall be entitled to demand a release to such extent.
- 6.9 Should Customer be in default of material obligations such as payment to Hempel Special Metals, Hempel Special Metals may, notwithstanding any other rights, take back the Retained Products and, after rescission of the contract, otherwise realize them for the purpose of satisfying its due claims against Customer without prejudice to any other rights it may have. In such case Customer shall grant Hempel Special Metals or Hempel Special Metals agents immediate access to the Retained Products and surrender the same. If Hempel Special Metals demands surrender according to this provision, this alone shall not constitute rescission of the contract.
- 6.10 In case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, Customer shall do everything to create equivalent security rights for Hempel Special Metals without undue delay. Customer shall cooperate in all measures such as registration or publication, which are necessary and beneficial to the validity and enforceability of such security rights.
- 6.11 On Hempel Special Metals demand, Customer is obliged to insure the Retained Products appropriately, to provide Hempel Special Metals with the respective proof of such insurance and to assign the claims arising from such insurance contract to Hempel Special Metals.
- 7. Quality, Warranties, Duty to Inspect the Goods**
- 7.1 Upon passing of the risk the object of delivery shall be of the agreed quality; the quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the objects of delivery ("*Beschaffensvereinbarung*").
- 7.2 In case of processing the objects of delivery according to the provided and released Quality Specifications of Customer, the quality of the objects of delivery shall be determined exclusively according to these released Quality Specifications and possibly other written agreements between the parties concerning the characteristics, features and specifications ("*Beschaffensvereinbarung*") of the objects of delivery. Customer shall not have any warranty rights against Hempel Special Metals for defects of the objects of delivery which are based on released Quality Specifications. Customer in particular is responsible for the correctness and feasibility of all Quality Specifications and amendments thereof prepared by Customer and handed over and released to Hempel Special Metals.
- 7.3 Information provided in sales catalogues, price lists and any other informative literature provided by Hempel Special Metals as well as any other descriptions of the objects of delivery shall under no circumstances constitute a guarantee for any specific quality of the object of delivery; such specific quality guarantees must explicitly be made in writing.
- 7.4 Customary variances in quantity and weight shall be valid within the limits of up to 10 % of the ordered quantity. Customary variances in quality shall also be valid if inherent in the object of delivery.
- 7.5 Customer's warranty rights shall require that it inspects the objects of delivery upon delivery without undue delay and notifies Hempel Special Metals without undue delay of any defects stating the invoice number in writing, but not later than two weeks following delivery; obvious transport damages must be notified to Hempel Special Metals in writing without undue delay. Hidden defects must be notified to Hempel Special Metals in writing without undue delay upon their discovery.
- 7.6 In the event of any notification of a defect, Hempel Special Metals shall have the right to inspect and test the objects of delivery to which objection was made. Customer will grant Hempel Special Metals the required period of time and opportunity to exercise such right. Hempel Special Metals may also demand from Customer that it returns the object of delivery to which objection was made to Hempel Special Metals at Hempel Special Metals expense.
- 7.7 Hempel Special Metals shall be entitled to remedy defects at its option by removing (e.g. repairing) the defect or by the delivery of a defect free replacement (jointly "subsequent performance"), both free of charge to Customer.
- 7.8 Hempel Special Metals shall bear the costs for shipment, travel, labor and material which accrue for the purpose of subsequent performance. Should the Customer's notification of defect prove to be unjustified in an intentional or grossly negligent manner and was this discernible for Customer before the issuance of the notification of the defect, Customer shall be obliged to render compensation to Hempel Special Metals for all costs incurred in this respect (e.g. travel and shipping costs).
- 7.9 Should the subsequent performance fail, be unreasonable for Customer or Hempel Special Metals refuses such subsequent performance according to Section 439 Subsection 3 BGB, Customer may, at its option, rescind the contract, reasonably reduce the purchase price and/or claim damages pursuant to Section 8 or the reimbursement of its expenses.
- 7.10 The period of limitations for claims for defects shall be twelve months from the hand-over of the object of delivery to Customer. The statutory limitation periods remain applicable to claims of Customer for damages which were not caused by defects of the delivery item and with regard to any rights of Customer with respect to defects concealed in bad faith or defects caused by willful misconduct.
- 8. Liability and Damages**
- 8.1 Subject to the provisions in Section 8.2 of these Terms of Delivery Hempel Special Metals statutory liability for damages shall be limited as follows:
- (i) For damages caused by a slightly negligent breach of a material contractual obligation Hempel Special Metals shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract;
- (ii) Hempel Special Metals shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.
- 8.2 The limitation of liability as set out above does not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act) or

to any liability for assuming a specific guarantee nor to any liability for culpably caused personal injuries.

- 8.3 The Customer shall take reasonable measures to avert and reduce damages.

9. Product Liability

In the event that the Customer sells the object of delivery, Customer shall indemnify Hempel Special Metals from any product liability claims of any third party in so far as it is responsible for the defect leading to the liability.

10. General Provisions

- 10.1 Customer shall not assign its claims against Hempel Special Metals to any third party without the prior written consent of Hempel Special Metals.
- 10.2 Amendments of and supplements to the contract and/or these Terms of Delivery and any side agreements must be in writing. The same shall apply to the amendment of this written form requirement.
- 10.3 If a provision of this contract and/or these Terms of Delivery 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 a valid provision coming closest to the commercial purpose of the invalid provision.
- 10.4 The place of performance for all mutual claims shall be Düsseldorf.
- 10.5 Exclusive venue for all disputes arising under the contractual relationship shall be Düsseldorf. Hempel Special Metals shall be entitled, however, to sue Customer at any other court having statutory jurisdiction.
- 10.6 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).