

General Conditions of Purchase of Hempel Special Metals GmbH (Status May 2020)

1. scope of application

- 1.1. The following General Purchasing Conditions (hereinafter referred to as "Purchasing 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 supplier regarding the purchase of movable goods ("Delivery Items").
- 1.2. Upon acceptance of an order by the supplier, at the latest upon delivery of the ordered delivery Items, the supplier acknowledges the sole validity of these Terms and Conditions of Purchase.
- 1.3. Should the supplier use conflicting, deviating or supplementary terms and conditions, these will only become part of the contract if and insofar as Hempel Special Metals has expressly agreed to their validity. Acceptance of delivery items or their payment does not imply approval by Hempel Special Metals, even if the acceptance or payment is made without reservation in knowledge of the supplier's conditions.
- 1.4. Individual agreements made with the supplier in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these terms and conditions of purchase. The content of such agreements is, subject to proof to the contrary, governed by a written contract or the written confirmation of Hempel Special Metals.

2. conclusion of contract

- 2.1. Orders of Hempel Special Metals are only binding if they are made in writing and signed with legal effect.
- 2.2. orders of Hempel Special Metals constitute offers to buy and have to be accepted by the supplier within 10 working days after receipt of the order by order confirmation. After this period Hempel Special Metals is no longer bound to the purchase offer. An order confirmation received at a later date or which deviates from the order in terms of content is considered a new offer and must be accepted by Hempel Special Metals to become effective. In no event shall Hempel Special Metals' silence be deemed to be acceptance of an order confirmation which deviates in content.

3. dispatch, packaging, transfer of risk

- 3.1. The delivery items have to be shipped "free works" (DDP according to INCOTERMS 2020) to the address indicated by Hempel Special Metals in the purchase order ("Delivery Address").
- 3.2. The risk of accidental loss or deterioration of the delivery items shall be borne by the supplier until they are handed over at the delivery address. The delivery address is the place of performance for the delivery and for any subsequent performance (obligation to be performed at the place of performance).
- 3.3. Hempel Special Metals may determine the method of packaging and shipping. If Hempel Special Metals does not do so, the supplier has to choose a suitable packaging and shipping method which is specifically favourable and suitable for each product. In case of culpable non-compliance with this obligation all costs incurred such as replacement for damaged goods, additional freight, disposal and the like shall be borne by the supplier. Upon request of Hempel Special Metals all packaging will be taken back by the supplier free of charge.

- 3.4. On the day of departure of the shipment a dispatch note shall be sent to Hempel Special Metals stating the order number, the quantity and the exact order of the goods. The shipment itself must be accompanied by the material certificate as well as a delivery note in duplicate with the same information as in sentence 1. Otherwise Hempel Special Metals is entitled to refuse acceptance of the shipment at the expense of the supplier.

4. delivery periods and dates

- 4.1. The delivery periods and dates stated in the respective order are binding and must be observed by the supplier.
- 4.2. Without prior written consent of Hempel Special Metals the supplier is not entitled to have the performance owed by him rendered by third parties.
- 4.3. Agreed delivery dates are fulfilled when the goods to be delivered have been handed over at the delivery address (cf. section 3.1) at the scheduled time. The delivery items must be delivered with the corresponding written documents (e.g. material certificates, certificates of inspection, analysis values, weight lists, insurance policies, bills of lading, etc.).
- 4.4. If agreed delivery dates are exceeded, Hempel Special Metals reserves the right to withdraw from the contract according to the legal provisions. In all other respects the supplier is obliged to compensate for the damage caused by delay according to the legal regulations.
- 4.5. The supplier undertakes to inform Hempel Special Metals immediately and in writing, stating the reason and the expected duration, of all circumstances which could affect a timely delivery, as soon as these circumstances become apparent.
- 4.6. Should force majeure, outbreak of war, natural disasters, epidemics, strikes, lock-outs, governmental measures and other unforeseeable, unavoidable and extraordinary events lead to the fact that the delivery cannot be accepted, Hempel Special Metals is released from the respective obligation to accept delivery for the duration of the disturbance and to the extent of its effect. In such a case the supplier has to store the delivery item at his own expense and risk. Hempel Special Metals will in good faith adapt its obligations to the changed circumstances. During such events Hempel Special Metals is - without prejudice to its other rights - entitled to withdraw from the contract in whole or in part, provided that such events are not of insignificant duration and provided that the demand at Hempel Special Metals is significantly reduced due to such events.

5. partial, excess, short or early deliveries

- 5.1. Hempel Special Metals is not obliged to accept partial deliveries not agreed upon. Hempel Special Metals is entitled to use partial deliveries without acknowledging the contractual conformity of the delivery. If partial deliveries are agreed upon, Hempel Special Metals may determine the order of the partial deliveries. For each individual shipment the supplier has to send a delivery note on the day of dispatch, stating the date of the order, the order number and quantity. Partial and remaining deliveries have to be separately marked as such.
- 5.2. The condition, type, quantity and weight of a delivery shall be determined by the values determined by Hempel Special Metals during the incoming goods inspection, unless the supplier proves an improper incoming goods inspection.
- 5.3. Hempel Special Metals is entitled to reject excess and short deliveries outside the usual commercial tolerances. Deliveries with deviations of more than 5% from the ordered quantity require in any case the prior written consent of Hempel Special Metals.

- 5.4. Hempel Special Metals is not obliged to accept an early delivery. In any case, however, the supplier bears the storage costs and the risk of accidental loss or deterioration of the delivery items until delivery at the agreed delivery address.

6. terms of payment

- 6.1. Invoicing by the supplier must be in Euro or in the currency specified in the order. The specification is binding for the supplier. Hempel Special Metals is entitled to fulfil payment obligations in Euro.
- 6.2. The price for the delivery as stated in the order is binding and applies to delivery free delivery address. It includes packaging, freight, insurance and similar. Value added tax is payable in addition and must be shown separately on the order confirmation, as a percentage and amount.
- 6.3. The invoice of the supplier has to be submitted to Hempel Special Metals in duplicate, stating the order number and date, separately from the delivery. If these details are missing or incorrect, the preconditions for default of payment will not arise until these details have been clarified.
- 6.4. Payment of the invoice amounts shall be made at the option of Hempel Special Metals within 8 days with 3% discount or within 30 days net, unless otherwise agreed. These periods begin with the date of receipt of the invoice by Hempel Special Metals, but not before delivery of the goods and presentation of the respective material certificates to Hempel Special Metals. In case of acceptance of premature deliveries the due date is based on the agreed delivery date.
- 6.5. Hempel Special Metals is entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent provided by law. In particular, Hempel Special Metals is entitled to withhold due payments as long as claims from incomplete or defective performance by Hempel Special Metals against the supplier still exist.
- 6.6. The set-off of claims of the supplier against Hempel Special Metals is only permitted in case of undisputed or legally binding claims.
- 6.7. The supplier may only exercise his right of retention against Hempel Special Metals if the supplier's counterclaim on which the supplier bases his right of retention is based on the same contractual relationship and is undisputed or legally binding.

7. retention of title

- 7.1. The transfer of ownership of the delivered goods to Hempel Special Metals is unconditional and without regard to the payment of the purchase price.
- 7.2. If Hempel Special Metals accepts in individual cases an offer for transfer of ownership made by the supplier conditional upon payment of the purchase price, the supplier's reservation of title expires at the latest upon payment of the purchase price. Hempel Special Metals remains authorized to resell the goods in the ordinary course of business even prior to payment of the purchase price with advance assignment of the resulting claim. Excluded are all other forms of retention of title, in particular the extended and the retention of title extended to further processing.

8. notice of defects upon delivery

- 8.1. Hempel Special Metals will inspect the purchased goods for possible defects or quality deviations immediately after delivery, as far as this is feasible in the ordinary course of business.
- 8.2. Hempel Special Metals shall notify the supplier of obvious defects immediately upon delivery; hidden defects immediately upon their discovery.
- 8.3. If acceptance has been agreed, there is no obligation to inspect.

9. rights of Hempel Special Metals due to defects

- 9.1. The statutory provisions on defects of quality and defects of title shall apply unless otherwise provided below.
- 9.2. The acceptance of delivery and payment shall not be deemed to be an acknowledgement of proper delivery.
- 9.3. If the supplier does not comply with his obligation of subsequent performance - at the option of Hempel Special Metals either by remedying the defect (subsequent improvement) or by delivering a defect-free product (replacement) - within a reasonable period of time set by Hempel Special Metals, Hempel Special Metals may remedy the defect itself and demand from the supplier reimbursement of the necessary expenses and a corresponding advance payment. If the subsequent performance by the supplier has failed or is unreasonable for Hempel Special Metals (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; Hempel Special Metals will inform the supplier of such circumstances immediately, if possible in advance.
- 9.4. Subsequent performance shall also include the removal of the defective delivery items and the reinstallation, provided that the delivery items have been installed in or attached to another item according to their nature and intended use. The legal claim of Hempel Special Metals for reimbursement of corresponding expenses remains unaffected. The expenses necessary for the purpose of inspection and subsequent performance shall be borne by the supplier even if it turns out that in fact there was no defect. Hempel Special Metals' liability for damages in case of unjustified requests for rectification of defects remains unaffected; however, in this respect Hempel Special Metals is only liable if Hempel Special Metals has recognized or grossly negligently failed to recognize that there was no defect.
- 9.5. Hempel Special Metals shall be entitled to the legally determined rights of recourse within a supply chain (supplier recourse according to §§ 445a, 445b, 478 BGB) without limitation in addition to the claims for defects. Hempel Special Metals is in particular entitled to demand from the supplier exactly the type of subsequent performance (repair or replacement) which Hempel Special Metals owes to the customer in the individual case. The statutory right of choice (§ 439 para. 1 BGB) is not limited thereby.
- 9.6. The claims of Hempel Special Metals from supplier recourse are also valid if the defective delivery items have been further processed by Hempel Special Metals or another contractor, e.g. by incorporation into another product.

10. product liability

- 10.1. To the extent the supplier is responsible for a product damage, he is obliged to compensate Hempel Special Metals for all damages incurred and/or to indemnify Hempel Special Metals on first demand from claims for damages by third parties to the extent that the cause was within his sphere of control and organization and he would be liable himself in the external relationship.
- 10.2. Within the scope of his indemnification obligation the supplier has to reimburse expenses according to §§ 683, 670 BGB (German Civil Code), which result from or in connection with a claim of third parties including recall actions carried out by Hempel Special Metals. Hempel Special Metals will inform the supplier - as far as possible and reasonable - about the content and scope of recall measures and give the supplier the opportunity to comment. Further legal claims remain unaffected.
- 10.3. The supplier is obliged to insure himself against the risks associated with the product liability for the delivered goods in an appropriate amount and to provide Hempel Special Metals with evidence of the insurance coverage in writing upon request.

11. limitation period

- 11.1. The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided for below.
- 11.2. The general limitation period for claims for defects is three years from the transfer of risk. Any statutory longer limitation periods shall have priority.
- 11.3. If the Supplier fulfils its obligation of subsequent performance by means of a replacement delivery, the limitation period for the delivery items delivered as replacements shall start anew after their delivery, unless the Supplier has expressly and appropriately reserved the right to make the replacement delivery only as a gesture of goodwill, to avoid disputes or in the interest of the continuation of the supply relationship.

12. final provisions

- 12.1. If a provision of the contract and/or these Terms and Conditions of Purchase is invalid in whole or in part, the validity of the remaining provisions shall remain unaffected.
- 12.2. Exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Düsseldorf. However, Hempel Special Metals is entitled to sue the supplier at any other legal place of jurisdiction.
- 12.3. 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).