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## GENERAL TERMS AND CONDITIONS OF PURCHASE

### 1. Scope

The following general terms and conditions of purchase apply exclusively to the entire current and future legal relationship between F. W. Hempel Intermetaux S.A. (hereinafter „Hempel“) and Supplier with respect to the purchase of movable objects („Objects of Delivery“). On Supplier's acceptance of any order submitted by Hempel, at the latest upon delivery of the ordered Objects of Delivery, Supplier accepts these general terms and conditions of purchase („Purchase Terms“) as exclusively binding. If Supplier uses terms and conditions which are contrary, different or complementary to the Purchase Terms, the application of such terms vis-à-vis Hempel is excluded even if such terms are not expressly objected to by Hempel.

### 2. Conclusion of Contract

2.1 Orders placed by Hempel are only binding if they are made in writing and signed by authorized signatories of Hempel. Orders made orally or by telephone, additions, modifications and side agreements to the orders are not binding unless confirmed in writing.

2.2 Orders placed by Hempel constitute purchase orders and must be accepted in writing by Supplier by an order confirmation within 5 business days after receipt of the order. After expiry of this deadline Hempel is no longer bound by its purchase order. A late acceptance of the order or an order confirmation which differs in content from the order constitutes a new offer and must be accepted in writing by Hempel in order to be valid. Under no circumstances shall silence on the part of Hempel be deemed as acceptance of an order confirmation which differs in contents from the order.

### 3. Shipment, Packaging, Risk

The following Sections 3.1 through 3.4 shall only apply if the parties did not validly agree on the application of the INCOTERMS 2002 or the INCOTERMS 2010 do not contain a valid corresponding provision.

3.1 The Objects of Delivery shall be delivered to the address indicated in the order by Hempel („Delivery Address“).

3.2 Supplier bears the risk of accidental loss of or damage to the Objects of Delivery until their arrival at the Delivery Address. The Delivery Address is the place of performance. Supplier, at its costs, shall insure the Objects of Delivery against accidental loss, accidental damage and culpably caused damage by Supplier.

Hempel may determine the type of packaging and shipment. If Hempel fails to determine the type, Supplier shall choose the type of packaging and shipment which shall be for each product the specifically most favorable and most appropriate. In case of culpable non-compliance with this obligation all costs incurred for replacement of damaged goods, multiple freights, waste disposal etc. shall be borne by Supplier. At the request of Hempel Supplier must take back at no additional charge all packaging material.

3.3 On the day the shipment is dispatched a dispatch note containing the order number, the quantity and the exact description of the order shall be sent to Hempel. A consignment note in duplicate containing exactly the same information shall accompany the shipment. Alternatively, Hempel is entitled to refuse acceptance of the shipment at Supplier's costs.

### 4. Delivery Deadlines and Date

4.1 The delivery deadlines and dates mentioned in each order are binding and must be complied with by Supplier.

4.2 Delivery dates agreed between the parties shall be deemed met as soon as the Objects of Delivery are received at the Delivery Address at the agreed date (see Section 3.1). The Objects of Delivery must in each case be delivered together with the related written documents (e.g., analysis results, weight lists, insurance policies, bill of lading, etc).

4.3 In the event that the agreed delivery date is exceeded Hempel reserves the right upon expiry of a fixed reasonable grace period to rescind the Contract by written notice. Furthermore, Supplier is obliged to compensate damages caused by default in accordance with the statutory provisions.

4.4 In the event that Supplier is in default with delivery and, without prejudice to all its other rights, Hempel is entitled to demand for each started week of the default a contractual penalty in the amount of 1 % of the delivery value of the goods in default, however, at most 5 % of the total value of the respective delivery. Hempel shall apply any accrued contractual penalty against the otherwise asserted claim for damages for default of delivery.



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4.5 Supplier undertakes to immediately inform Hempel in writing about any and all circumstances which may affect a timely delivery as soon as it becomes aware of them; it must indicate the reasons for this delay and the possible duration thereof.

4.6 If Acts of God, outbreak of war, natural disasters, strikes, lock-outs, governmental decrees and other unforeseeable, unavoidable and material events which are out of the control of Hempel and for which Hempel is not responsible cause that the delivery cannot be accepted / delivered, Hempel is released from its obligation of acceptance for the duration of such disturbance and to the extent delivery is affected. Hempel shall adjust its obligation in good faith to the differing circumstances; this means that Hempel may, following the resolution of the interruption, waive the outstanding delivery in full or in part or may require a continuation of the deliveries. In such a case Supplier, at its costs and risk, shall take the Object of Delivery into storage.

## 5. Partial, Excess, Short and Early Deliveries

5.1 Hempel is not obliged to accept non-agreed partial deliveries. Hempel is, however, entitled to use partial deliveries without recognizing thereby that delivery was effected as contractually agreed. If partial deliveries are agreed upon, Hempel may determine the order of the deliveries. Supplier must submit a delivery notification for each individual delivery containing the date on which the order was placed, the order number and the quantity. Partial and outstanding deliveries must be marked as such separately.

5.2 The values determined by Hempel at the incoming goods inspection shall be decisive for condition, kind, quantity and weight of a delivery unless Supplier is able to prove an improper incoming inspection.

5.3 Hempel is entitled to reject excess and short deliveries which exceed tolerances customary in the trade. Deliveries, in which the deviations account for more than 5 % of the ordered quantity, require in any case the prior written approval of Hempel.

5.4 Hempel is not obliged to accept an early delivery. However, in any case Supplier bears the costs for storage and risk until the due date.

## 6. Terms of Payment

6.1 Supplier's invoices shall in principle be submitted in Euro or in such currency, respectively, which is determined in the order. Such determination is binding for Supplier.

6.2 The price for the delivery shown in the order (order confirmation) is a fixed price. It includes packaging, freight, insurances and similar.

6.3 Unless the parties have agreed upon a fixed price, the respective price results from the pricing formula contained in the order (order confirmation). If the final prices for the Objects of Delivery are determined at the end of a month in which the delivery was effected, Supplier shall issue and send to Hempel a final invoice prepared in accordance with the pricing formula. Section 6.4 shall apply to this final invoice. Excess payments, if any, by Hempel shall be reimbursed to Hempel without any deductions within 30 days. If Hempel is obliged to make any supplementary payments, these shall be made in accordance with the provisions set forth in Section 6.5.

6.4 Supplier shall provide Hempel, separately from delivery, with two copies of the invoice which should contain the order number and the respective date. If this information is missing or incorrect, the requirements of a default in payment are excluded until the relevant information is provided.

6.5 Payment of any invoice amount may, at Hempel's discretion, be made within 8 days with a 3 % discount or within 30 days net, unless otherwise provided for. These deadlines start running from the day of receipt of the invoice by Hempel, but in any event not before Supplier has delivered the Objects of Delivery and the quality was tested within a reasonable period. In case early deliveries are accepted the due date depends on the agreed date of delivery.

6.6 In case of defective delivery Hempel is entitled to withhold payment until due performance or any other amicable agreement has been reached between the parties.

6.7 Hempel is entitled to set off against the claims of Supplier all those claims which Hempel has against Supplier.

6.8 Supplier shall only be allowed to set off claims against Hempel in case these claims are uncontested or finally adjudicated. Supplier may exercise its right of retention against Hempel only if the counter-claim of Supplier on which its right of retention is based results from the same contract and is uncontested and finally adjudicated.



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## 7. Notification of Defects upon Delivery

Hempel shall inspect the purchased Objects of Delivery immediately upon delivery pursuant of the requirements of the normal course of business for possible defects or deviations in quality; Hempel shall notify Supplier about any obvious defects immediately upon receipt of the delivery, but no later than 14 business days following delivery; hidden defects must be notified without undue delay upon their discovery.

## 8. Hempel's Warranty Rights

8.1 The quality of the Objects of Delivery and Supplier's warranty obligations (Einstandspflicht) with respect to their quality depend on the respective agreements between the parties. The Objects of Delivery must always be free from any radioactivity. Accordingly, Supplier shall deliver the Objects of Delivery free from defects of quality and defects in title. The Objects of Delivery shall furthermore correspond with all applicable statutory provisions including all applicable EU directives, in particular safety regulations.

8.2 If Supplier is in breach of its obligations pursuant to Section 9.1 the rights of Hempel, in particular the rights to supplementary performance, rescission, price reduction, damages or reimbursement of expenses as well as the applicable period of limitation are determined by the statutory provisions.

8.3 In addition to the statutory provisions (see Section 9.2) Hempel at Supplier's costs and expenses is entitled to repair itself the defective Objects of Delivery or to replace the defective goods where the remedy of the defect does not allow any delay (e.g., in case of imminent danger), where the supplementary performance failed or is otherwise unreasonable for Hempel or where Supplier is unable to comply with Hempel's request for supplementary performance within a reasonable period of time.

8.4 The acceptance of delivery and payment are not to be viewed as acceptance of proper delivery.

## 9. Product Liability

9.1 Where Supplier is responsible for a product defect, the cause of which lies within its sphere of control and for which it is liable to third parties, it is obliged to compensate Hempel for all damages and to indemnify Hempel against any third party claims upon first demand.

9.2 Supplier is obligated to take out appropriate product liability insurance to cover the risks associated with the Objects of Delivery delivered by it and to provide upon demand Hempel with evidence of the relevant insurance policy.

## 10. Final Provisions

10.1 The transfer of the order to third parties including the assignment of rights and obligations resulting therefrom requires the prior written consent of Hempel, with the exception of the assignment of purchaser's accounts receivable. In case this provision is not complied with, Hempel reserves the right to rescind this Agreement by written notice and/or to claim damages.

10.2 Amendments of and supplements to any contract and/or these Purchase Terms as well as any side agreements shall be valid only if made in writing. This shall also apply for any amendment concerning this written form requirement.

10.3 If a provision of a contract and/or these Purchase Terms is invalid in full or in part, the validity of the remaining provisions shall remain unaffected thereby. The parties agree in this case to replace the invalid provision by such valid provision which comes as closely as possible to the economic purpose of the invalid provision.

10.4 Exclusive venue for all disputes arising out of or under the present General Terms and Conditions is Geneva, Switzerland. Hempel is, however, entitled to sue Supplier at any other court having jurisdiction.

10.5 This Agreement shall be governed by the laws of Switzerland, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).