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GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. Scope

The following general terms and conditions of sale and delivery (hereinafter „Terms of Delivery“) apply exclusively to the entire current and future legal relationship between F. W. Hempel Intermetaux S.A. (hereinafter „Hempel“) and Purchaser with respect to the purchase of movable goods („Objects of Delivery“). By the placing of an order, at the latest upon receipt of the ordered Objects of Delivery, Purchaser accepts the exclusive binding force of these General Terms of Delivery. If Purchaser uses terms and conditions which are contrary, different or complementary to these Terms of Delivery, their application vis-à-vis Hempel is excluded, even if such terms and conditions are not expressly objected to by Hempel.

2. Offer and Conclusion of Contract

The offers made by Hempel are valid for a period of 5 business days as of their receipt by the Purchaser. The Purchaser is bound by the counter-offer it may make for a period of 5 business days following receipt by Hempel of the counter-offer. A contract between the Parties shall be deemed effective only if it has been confirmed by Hempel in a written order confirmation and shall be governed exclusively by the contents of the order confirmation and/or by these Terms of Delivery. Oral promises or agreements are not deemed to constitute a valid contract between the Parties, unless confirmed in writing by Hempel. In any event, any written agreement between the Parties shall take prevalence over oral or tacit agreements.

3. Delivery Periods and Deadlines

3.1 Delivery periods and delivery deadlines are only binding if they have been confirmed by Hempel in writing and Purchaser has or provided Hempel in a timely manner with all information, documents, permits and releases required for the performance of such delivery and has paid any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties start on the date the respective order is confirmed or accepted, as the case may be. In the event of additional or supplementary orders, the delivery periods shall be extended accordingly.

3.2 Events which are unforeseeable, unavoidable and lie beyond the control of Hempel and for which Hempel does not bear responsibility, such as Acts of God, war, natural disasters, strikes, lock-outs, governmental decrees or similar events, shall release Hempel from its obligation to make timely delivery or perform timely for the duration of such event. Periods agreed upon between the parties shall be extended by the length of such disturbance; Purchaser shall be informed about the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable or if the disturbance lasts for more than two months, both parties shall be entitled to cancel the Agreement.

3.3 With regard to Objects of Delivery which Hempel does not produce itself but purchases from subcontractors, the correct and timely self-supply shall be reserved.

3.4 If deliveries by Hempel are delayed, Purchaser shall be entitled to cancel the Agreement only if Hempel is responsible for the delay and after a reasonable grace period set by Purchaser has expired without any success.

3.5 If Purchaser fails to accept the delivery or breaches any other duties of cooperation, Hempel is entitled (without prejudice to any of its other rights) to appropriately store the Object of Delivery at Purchaser's risk and expense or to cancel the Agreement.

3.6 Hempel may make partial deliveries for good reason to the extent they are reasonably acceptable for the Purchaser.

4. Shipment, Risk, Insurances

The following Sections 4.1 through 4.3 shall only apply if the parties have not validly agreed on the application of the INCOTERMS 2002 or such INCOTERMS 2002 do not contain a corresponding valid provision.

4.1 In the absence of any other instruction by Purchaser, shipment shall be made by using a reasonable method of shipment in the usual type of packaging.

4.2 The transfer of the risks in the Objects of Delivery shall be governed by the Incoterm chosen by the Parties, unless they agree differently in writing.

4.3 Transport insurances shall only be taken out at Purchaser's request and costs.



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5. Prices, Terms of Payment

5.1 The prices agreed upon between Hempel and Purchaser are fixed prices.

5.2 Unless the parties have agreed on fixed prices, the respective applicable price results from the pricing formula contained in the order / order confirmation. In accordance with this pricing formula based on the prices published for the month preceding the delivery a provisional invoice is issued and sent to Purchaser. With respect to this provisional invoice the date of payment set forth in Section 5.5 shall apply. As soon as the final prices for the Objects of Delivery are published at the end of the month in which the delivery was effected, Hempel shall issue a final invoice in accordance with the pricing formula and send it to Purchaser. Excess payments, if any, shall be reimbursed by Hempel within the period set forth in Section 5.5. Supplementary payments, if any, shall be made by Purchaser also in accordance with Section 5.5.

5.3 If after the conclusion of a contract Hempel is faced with unforeseeable increases in costs for material and wages as well as in particular increases in energy costs, Hempel shall be entitled, at its reasonable discretion, to increase the agreed price to the extent necessary to cover these costs increases.

5.4 Hempel is entitled to issue partial invoices for partial deliveries pursuant to Section 3.6.

5.5 Each invoice of Hempel is due for payment without any deductions within 30 days of receipt of the invoice. If this period for payment expires without success, Purchaser shall be in default.

Payments by Purchaser shall only be deemed effected if Hempel can dispose of the amount.

5.6 In the event that Purchaser is in default of payment, Hempel is entitled to demand default interest in the applicable statutory amount. The right to assert a claim for further damages caused by such default of payment shall remain unaffected.

5.7 Bills of exchange and cheques shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for Hempel.

5.8 Purchaser is only entitled to a set off if its counterclaim is uncontested or has been finally adjudicated.

5.9 Purchaser is entitled to assert a right of retention only to the extent that its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

5.10 If Hempel becomes aware of the risk that Purchaser may possibly not be able to perform („mangelnde Leistungsfähigkeit“) after conclusion of the contract, Hempel is entitled to make any still outstanding deliveries only against advance payment or provision of security. If such advance payments or securities have not been made or rendered even after expiration of a reasonable grace period, Hempel may rescind, in full or in part, the individual or all agreements concerned. Hempel's assertion of further rights shall remain unaffected.

6. Retention of Title

6.1 Hempel shall retain title to the Objects of Delivery until any and all claims of Hempel arising under its business relationship with Purchaser 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 to which balance Hempel is entitled.

6.3 Purchaser shall only be allowed to sell the Objects of Delivery subject to retention of title (“Retained Products” - „Vorbehaltsprodukte“) in the ordinary course of business. Purchaser already now assigns its claim for the purchase price arising from the onward sale of the Retained Products to Hempel, and Hempel hereby accepts such assignment. Purchaser is granted the revocable authorization to collect in trust the claims assigned to Hempel in its own name. Hempel may revoke such authorization and the right to resell the Retained Products if Purchaser is in default of the performance of any material obligation such as payment to Hempel; if the authorization is revoked, Hempel is entitled to collect the respective claim itself. Purchaser is not entitled to pledge the Retained Products, grant chattel mortgages on them or make other dispositions endangering Hempel's title to them. In case Purchaser sells the Retained Products after processing or transforming or after joining, blending or mixing with other goods or otherwise together with other goods, then the assignment of claim shall be deemed agreed only in the amount of that part which corresponds to the price agreed upon between Hempel and Purchaser plus a safety margin of 10 % of this price.



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6.4 Any processing or transforming of the Retained Products by Purchaser is always effected on behalf of Hempel without creating any obligation for Hempel thereby. If the Retained Products are processed together with other goods, Hempel shall acquire the co-ownership in the new product in proportion to the value of the Retained Products to the other processed items at the time of processing. For the new product created by processing the same provisions shall apply as are applicable for the products delivered under reservation.

6.5 If the Retained Products are joined, blended or mixed with other goods, Hempel shall acquire the co-ownership in the new product in proportion to the value of the Retained Products to the other items at the time of joining, blending or mixing. If the joining, blending or mixing takes place in such a way that Purchaser's Goods are to be considered as the main goods, then it is agreed that Purchaser transfers the co-ownership to Hempel on a pro rata basis. Purchaser shall keep the created co-ownership on behalf of Hempel.

6.6 Purchaser shall provide Hempel at any time with all requested information about the Retained Products or claims, if any, which are assigned to Hempel under any contract. Attachments of or claims by third parties to the Retained Products shall be immediately reported to Hempel by Purchaser and accompanied by the necessary documents. Purchaser shall at the same time advise the third party of Hempel's retention of title. The costs of a defense against attachments and claims shall be borne by Purchaser.

6.7 Purchaser is obliged to treat the Retained Products with due care for the duration of the retention of title.

6.8 Should the realizable value of the securities exceed all of Hempel's claims which are to be secured by more than 10 %, Purchaser shall be entitled to demand a release to such extent.

6.9 In the event Purchaser is in default of any material obligations such as payment to Hempel, Hempel will be entitled to take back the Retained Products and upon rescission of the contract may otherwise realize them for the purposes of satisfying its due claims against Purchaser without prejudice to any other rights Hempel may have. In case of a claim for their return, Purchaser shall grant Hempel or Hempel's agents immediate access to the Retained Products and surrender the same. Should Hempel demand surrender under this clause, this shall not be deemed as rescission of the contract.

6.10 In case of deliveries into other jurisdictions in which the above provisions governing the retention of title do not have the same security effects as in Germany, Purchaser shall take all measures in order to provide Hempel immediately with equivalent security interests. Purchaser shall cooperate in all activities such as registration or publication which are necessary or beneficial for the effectiveness and enforceability of such security interests.

6.11 At the request of Hempel, Purchaser is obliged to insure the Retained Products appropriately to provide Hempel with the relevant evidence of insurance and to assign the claims arising from such insurance contract to Hempel.

6.12 This clause 6 is exclusively governed by German law.

7. Characteristics, Warranty, Duty to Inspect to Goods

7.1 The Objects of Delivery have the agreed characteristics upon the passage of risk; these characteristics shall exclusively be determined by the specific agreements made by the parties in writing with regard to the characteristics, features and characteristics of performance of the Objects of Delivery („Beschaffensvereinbarung“ – „quality agreement“).

7.2 Deviations from quantities and weight customary in the trade within a scope of up to 5 % of the purchase order quantity are permissible. Also permissible are quality deviations or deviations from the quality agreement which are customary in the trade and which inherently result from the special nature of the Object of Delivery.

7.3 Purchaser's warranty rights for defects in the Object of Delivery shall require that it inspects the Object of Delivery upon delivery and notifies Hempel of any defects in writing by indicating the invoice number without undue delay but no later than 5 business days following delivery; hidden defects must be notified to Hempel in writing without undue delay upon their discovery.

7.4 In the event of any notification of a defect, Hempel shall have the right to inspect and test the Object of Delivery to which objection was made. For this purpose, Purchaser will grant Hempel the required period of time and opportunity to exercise such right. Hempel may also demand from Purchaser that it returns the Object of Delivery to which objection was made to Hempel at Hempel's costs.

7.5 Hempel shall remedy any defects at its option by removing the defect or by delivery of a replacement free from any defects, both free of charge to Purchaser (together hereinafter „Supplementary Performance“).



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7.6 Hempel shall bear the costs for shipment, travel, labor and material which accrue for the purpose of the Supplementary Performance. If it turns out that the notification of a defect is not justified due to intentional or negligent misrepresentation and if Purchaser was aware of this fact prior to notifying the defect, then Purchaser shall be obliged to reimburse Hempel for all expenses incurred in this context (e.g., travel and shipment costs).

7.7 Should the Supplementary Performance fail, should such remedy be unreasonable for Purchaser or has Hempel refused such remedy, then Purchaser may demand, at its option, in accordance with the statutory provisions the rescission of the contract, a reduction of the purchase price and/or claim damages pursuant to Section 8 or the reimbursement of its expenses.

7.8 The limitation period for Purchaser's warranty claims shall be twelve months from the hand-over of the Object of Delivery to Purchaser. For claims for damages due to other reasons than defects of Object of Delivery or for rights of Purchaser with respect to defects concealed in bad faith or defects caused intentionally the statutory limitation periods shall apply.

8. Liability and Damage Compensation

8.1 Subject to the provision in Section 8.2, Hempel's statutory liability for damages shall be limited as follows:

- (i) Hempel shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract for damage caused by any slightly negligent breach of material contractual obligations;
- (ii) Hempel shall not be liable for damage caused by a slightly negligent breach of non-material contractual obligations.

8.2 The above-mentioned limitation of liability does not apply to any mandatory statutory liability or to any liability for assuming a specific guarantee nor to any liability for culpably caused personal injuries.

8.3 Purchaser is obliged to take all reasonable measures to avert and mitigate damage.

9. Product Liability

If Purchaser sells the Object of Delivery, it shall indemnify Hempel from any product liability claims raised by third parties insofar as Purchaser is responsible for the defect causing such liability.

10. General Provisions

10.1 Without the written consent of Hempel Purchaser shall not be entitled to assign its claims against Hempel to any third party.

10.2 Amendments of and supplements to this Agreement and/or the Terms of Delivery and any side agreements must be in writing. The same shall apply to any amendment of this written form requirement.

10.3 If a provision of this Agreement and/or these Terms of Delivery 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 close as possible to the economic purpose of the invalid provision.

10.4 Place of performance for all mutual claims is Geneva, Switzerland.

10.5 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 Purchaser at any other court having jurisdiction.

10.6 This Agreement shall be governed by the laws of Switzerland excluding the UN Convention on Contracts for the International Sale of Goods (CISG). Clause 6 of the present General Terms and Conditions remain expressly reserved.