

# General Conditions of Sale, Delivery and Service



## 1. DEFINITIONS

(a) "The Contract" means the agreement between the Seller and the Buyer as regards the Products named overleaf, including these General Conditions.

(b) "The Products" means paints, coatings and related products and services as well as their packaging that form the subject-matter of the Contract.

(c) "The Seller" means Hempel A/S ("Hempel") or alternatively the company named overleaf as the seller of this page.

(d) "The Buyer" means the company specified overleaf as the buyer of this page.

(e) "The Vessel(s)" means the vessel(s) named overleaf of this page.

## 2. SCOPE

(a) These General Conditions set out the standard terms on which the Seller supplies the Products to the Buyer and they shall apply to all quotations and sales unless otherwise agreed in writing.

The Seller shall not be bound by conflicting purchasing conditions or reservations made by the Buyer even if the Seller has not explicitly contradicted the conditions or reservations. The Buyer may not assign his rights and obligations under these General Conditions.

(b) The legality, validity and enforceability of other clauses in these General Conditions will not be affected if one of the clauses is or becomes illegal, invalid or unenforceable.

## 3. QUOTATIONS AND ORDERS

(a) The Seller's quotation for goods or services is valid for 30 days from the date when the Buyer receives the quotation unless otherwise agreed in writing. The quotation shall be void if the Buyer does not accept the quotation

unconditionally by placing a written order within 30 days.

(b) The Seller is only bound by an order if he accepts it in writing or delivers the Products ordered to the Buyer.

## 4. PRICES

(a) The prices in the Seller's price lists applicable on the date of conclusion of the Contract shall apply, unless otherwise agreed in writing.

(b) Prices exclude taxes and duties as well as any loading and delivery costs that the Buyer must pay. All prices include the Seller's standard packing, but not pallets or crating for export goods.

(c) Prices are based on present material, shop and freight costs. In the event of an increase of more than five per cent (5%) in aforementioned factors within the period between the conclusion of the Contract and the time of actual delivery, the Seller reserves the right to adjust the prices to directly reflect such changes.

## 5. PAYMENTS, TERMINATION, SUSPENSION AND LICENCES

(a) Payment shall be made by electronic draft to the bank account designated by the seller.

(b) The Buyer must pay the full invoice amount within 30 days from the date of the invoice unless otherwise agreed in writing. The Seller is entitled to charge interest on overdue payments at the greater of the following two rates:

(i) 1.5% above the current monthly base rate of the Seller's bank as a monthly interest rate, or

(ii) 2% above the annual discount rate of the Central Bank in the country of the Seller's domicile as an annual interest rate.

The Buyer shall indemnify the Seller for all

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costs and expenses that the Seller incurs in collecting overdue amounts.

(c) The Seller is entitled to terminate the Contract immediately by written notice to the Buyer if the Buyer is in material breach of his obligations under the Contract or any other agreement with the Seller (material breach).

According to these General Conditions, material breach shall include, but not be limited to, situations where:

- (i) the Buyer fails to meet his liabilities when they fall due,
  - (ii) the Buyer seeks a composition with his creditors,
  - (iii) all or part of the Buyer's property is subject to receivership, or
  - (iv) a petition for liquidation, winding-up or receivership is filed in respect of the Buyer.
- (d) In the event that the Seller gives notice of termination according to the terms of Clause 5(c), all outstanding instalments shall be accelerated and deemed due and payable immediately and automatically.

The Seller shall be released from his obligations under the Contract from the time he gives notice of termination, except for warranties for Products supplied and fully paid for before the date of termination.

(e) The Buyer may not withhold, set off or deduct claims against the Seller from any amount that he owes the Seller under the Contract or any other agreement with the Seller.

(f) The Seller's obligation to deliver the Products shall terminate if the Buyer fails to make due payment of all amounts that he owes the Seller at the date of delivery under the Contract or any other agreement with the Seller. Furthermore, the Seller shall be entitled

to suspend delivery of the products if the Buyer is in default and such suspension of delivery shall not affect the Seller's other rights under the Contract or any other agreement with the Buyer. The Seller is not obliged to resume deliveries until the Buyer has paid all overdue amounts, including all expenses and accrued interest.

(g) It is the Buyer's exclusive responsibility to obtain all licenses, exchange control documents and other consents needed for the export and import and use of the Products. The Buyer shall not be discharged from his obligations under these General Conditions if he fails to obtain a license or other qualification requirements. The seller shall have the right to decide whether to deliver the goods or not as the case may be.

## 6. DELIVERY AND FORCE MAJEURE

(a) Products shall be delivered at the place designated by the seller and shall be delivered in accordance with CIP (Incoterms 2000).

(b) The Buyer shall pay all costs incurred by the Seller as a result of the Buyer's failure to take delivery in time on the following date:

- (i) on the date stated in the invoice or the Seller's confirmation, or
- (ii) when the Products are ready, if the Seller has notified the Buyer in writing of their readiness, and the Buyer has not taken delivery within seven days thereof, but never later than the date stated in (i) above, unless otherwise agreed in writing.

(c) If the Seller agrees to deliver the Products on a specific date and fails to do so, the Buyer shall be entitled to cancel the whole order, or any part thereof, which has not been delivered. The Buyer accepts such right to cancel as his only remedy and expressly waives any other rights.

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(d) If agreed between the parties that the Products shall be transported at the Seller's risk, the Buyer must thoroughly inspect such Products upon delivery. The Buyer shall notify the Seller within 48 hours from delivery of any damage to, loss or shortage of the Products. If the Buyer does not receive the Products on the agreed date of delivery, he must notify the Seller within 48 hours of the agreed date of delivery. The Seller disclaims all liability, and the Buyer waives his rights of recovery, under this provision unless the Buyer's information is sufficient to allow the Seller to make a valid claim against the carrier of the Products for such damage, loss or shortage.

(e) The Seller is released from his obligation to deliver the Products on the original delivery date, and is allowed to extend the date of delivery, if events beyond his reasonable control (force majeure) prevent him from performing the Contract. Should such events continue to prevent the Seller from performing the Contract, the Seller may cancel the order or terminate the contract.

(f) The Seller may withhold, reduce or suspend delivery of the Products to reasonably allocate his supply capacity between the Buyer and his other customers if events beyond his reasonable control prevent him from delivering all the Products and fully comply with orders from his other customers. In such event, the Buyer is entitled to cancel the undelivered order(s) The seller shall not be liable for breach of contract or compensation.

### **7. PASSING OF RISK AND TITLE AND RETURNS**

(a) Product delivery and risk transfer shall apply to CIP Incoterms 2000. The seller shall be deemed to have delivered the goods to the carrier appointed by the seller at the seller's place or at the place designated by the seller (i.e., manufacturer, factory, warehouse, etc.) and the risk shall be transferred from the seller

to the buyer at the time of product delivery.

In the case of buyer's own delivery of the product, the risk is transferred from seller's delivery to buyer or carrier designated by buyer. If the buyer fails to extract the products on the date when the seller informs the buyer of the availability of the products, the buyer shall bear the risk of damage or loss of the products and relevant storage costs from that date.

(b) The Seller remains the owner of the Products until he receives full payment for all Products whether or not the Products have been delivered to the Buyer. If the Buyer resells the Products to a third party before the Seller receives full payment, the proceeds of the sale shall first apply to pay all amounts due to the Seller. In the event that the Buyer has not paid the full purchase price or if insolvency proceedings are commenced against the Buyer, the Seller or his representative is entitled to recover or resell the Products and to enter the Buyer's premises for that purpose and such steps shall not affect the Seller's other rights.

(c) All sales are final. The Buyer is not entitled to credit for returned Products whether or not he has made a complaint or a claim, unless otherwise agreed in writing in which case the Buyer is obliged to return such Products promptly and in good condition, carriage-paid.

### **8. THE SELLER'S WARRANTY AND LIMITATIONS OF LIABILITY**

The Seller's Liability for the Products

(a) The Seller warrants that the Products are of sound material and workmanship and conform to the published product information that applies at the date of purchase. This Clause 8 provides the only warranty for the Products, and it replaces and supersedes all other warranties for the Products, whether express or implied. The Seller shall not be liable for any other (express or implied) liability, whether

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infringement or otherwise, for the quality, performance, marketability or fitness for any purpose of the Products.

(b) The Seller's warranty does not include defects or damage that occur in areas that are not reasonably accessible through ordinary means of repair because of their shape or location. Nor does the Seller's warranty include damage which is caused by mechanical damage, welding or other heating, bacterial attack, pollution, electromechanical actions, damage during repair, deterioration beneath applied coatings or friction, (except for ordinary wear and tear) . The Seller is only liable under this warranty, if the Buyer has:

- (i) prepared all surfaces before coating and maintained them after coating,
  - (ii) transported, stored, handled and used the Products in accordance with all information given to the Buyer by the Seller and any international customs of the trade,
  - (iii) made a written claim documenting the alleged defect in or damage to the Products within 10 days of the date when the Buyer first became aware or could reasonably have become aware of the defect or the damage,
  - (iv) allowed the Seller reasonable time to inspect the Products and the area of their application,
  - (v) complied with his obligations under the Contract, including making timely payment of the purchase price, and
  - (vi) stopped using the Products as soon as he detected or could have detected the defect.
- (c) In the event of a breach of warranty under this Clause 8, the Seller must at his own option either replace the Products or pay the costs of purchasing equivalent Hempel products elsewhere, but the Seller is not obliged to pay an amount above the invoiced price for the

Products. The Buyer is not entitled to any other remedy once the Seller has replaced the Products or paid the costs of purchasing equivalent Hempel products elsewhere. The Seller may suspend subsequent deliveries of the Products or postpone corresponding dates of delivery accordingly until the validity of the Buyer's claim has been finally

determined.

(d) This warranty lapses automatically when the Products' shelf-life ends or 12 months after the date of delivery, whichever is the earlier.

The Seller's Liability for Technical Advice or Other Services

(e) The Seller is only liable for technical advice, instructions and other information about the use of the Products or other services provided by himself or his representative if the Buyer can demonstrate that

(i) the Seller has given the advice or services negligently in light of the information, equipment and knowledge available to the Seller at the time, and

(ii) that the Buyer has suffered direct loss as a result. Consequently, the Seller is not liable for indirect losses, including loss of profit or earnings, loss of time or loss of use of the Vessel(s), machinery or equipment.

Limitation of Liability

(f) The parties agree that the Seller's liability to the Buyer shall not exceed the invoiced price for the Products.

(g) The Seller shall not be liable for any loss of profit or earnings, loss of time or loss of use of the vessel(s), machinery or equipment. In no circumstances shall the Seller be liable for any special or indirect loss or damage whatsoever.

(h) The Seller shall not be liable for any infringement of a third party's intellectual

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property rights caused by the Buyer's use of the Products.

(i) Any exclusions or limitations of liability in this Contract in favor of the Seller are agreed to be extended for the benefit of all companies and/or individuals within the Hempel Group by mutual consent. The Buyer agrees in the appointment of the Seller as its agent or trustee solely for the extension of the benefit of the exclusions and limitations of liability. All duties, liabilities and obligations which would otherwise result from this agency are expressly excluded.

### Limitation Period

(j) Except as otherwise mandatory in the applicable law regarding personal injury and death, the Buyer shall have no claim against the Seller, in contract or in tort, in relation to anything performed or delivered under the Contract (including claims for defective products, services or goods), unless the Seller has been notified in writing of such claims within twenty-four (24) months of delivery.

## 9. TRADE RESTRICTIONS

(a) The Buyer shall comply with all applicable national and international (re-)export control regulations for the Territory, including but not limited to (re-)export control regulations of the European Union, of the United States of America and of the United Nations, (collectively "Export Laws") and Hempel's Sanctions and Export Control Policy to ensure that neither the Hempel Product, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

(b) Prior to any transfer of Products, works and services provided by Hempel, the Buyer shall in particular check and guarantee by appropriate measures that:

i) there will be no infringement of an embargo imposed by the European Union, by the United States of America and/or by the United Nations by such transfer, by brokering of contracts concerning those Products, works and services or by provision of other economic resources in connection with those Products, works and services, also considering the limitations of domestic business and prohibitions of bypassing those embargos;

ii) such Products, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;

iii) the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

(c) In the event that during the term of this Agreement, either:

(i) the Distributor becomes the subject of Sanctions and/or Export Control restrictions; and/or

(ii) the transaction contemplated in this Agreement is, or in likelihood may be (as determined at Hempel's sole discretion) a Sanctionable Activity and/or breach of the Export Control Provisions, then any outstanding obligations of Hempel to continue to perform, deliver or offer the Products and/or services (which shall include any obligations under any related stand-alone benefit, such as a warranty) will automatically be suspended, at no liability or cost to Hempel.

(d) In the event that such Sanctions or Export Control restrictions are subsequently lifted or if the completion of Hempel's outstanding obligations are no longer at risk of being a Sanctionable Activity and/or in breach of the

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Export Control Restrictions, the suspended obligations of Hempel shall come into force again, but always subject to being within the original term of this Agreement (or if a related stand-alone obligation, within the original term of any such relevant stand-alone agreement).

(e) If required to enable authorities or Hempel to conduct export control checks, The Buyer, upon request by Hempel, shall promptly provide Hempel with all information pertaining to the particular end customer, the particular destination and the particular intended use of Products, works and services provided by Hempel, as well as any export control restrictions existing for the Territory and the end customer.

(d) The Buyer hereby confirms that the product sold by Seller herein will not be export or (re-export) to any end-user connected to any armed force, armed group or militia, and in a country that prohibited by Hempel according to Hempel's Sanctions and Export Control Policy from time to time (e.g. North Korea, Iran, Syria, Sudan, Cuba, Crimea and Sevastopol, Russia or Myanmar).

(e) The Buyer shall indemnify and hold harmless Hempel from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Buyer, and the Buyer shall compensate Hempel for all losses and expenses resulting thereof.

## 10. CHOICE OF LAW AND JURISDICTION

(a) This contract is governed by and construed in accordance with the laws of the People's Republic of China. All disputes arising out of or in connection with the performance of this contract shall be settled through friendly negotiation. If neither party is willing to

negotiate with the other party or if no settlement can be reached through negotiation, both parties agree that either party has the right to bring a lawsuit to the people's court with jurisdiction in the place where the plaintiff is located. However, explicitly agreed to by the buyer, the seller may act in another jurisdiction, to guarantee the seller under the contract of this claim. The security also includes admiralty arrest proceedings against the Vessel(s), any sister ships or, if permitted under local law, other vessels under the same or associated management or control.

(b) Neither the Uniform Law on the International Sale of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods nor the Convention on Contracts for the International Sale of Goods applies to the Contract. Incoterms 2000 are to be considered an integral part of these General Conditions unless they are inconsistent with the above terms.

(c) The Contract constitutes the entire agreement between the Seller and the Buyer concerning the supply of the Products. The Buyer agrees that he has no other rights of recourse against the Seller other than those expressly stated in these General Conditions. These General Conditions shall apply whether or not the Buyer has a cause of action based on negligence on the part of the Seller or his representative.

## 11. MISCELLANEOUS

Without prior written consent of the Seller, the Buyer shall not transfer or resell the goods to any third party by any means or for the purposes other than those agreed herein, otherwise, the Seller shall have the right to early terminate this contract and claim to the Buyer for any loss that it suffered from the breach of the Buyer.