

# General Conditions of Sale, of Hempel Products and/or Services



Effective as of January 2021

## 1. DEFINITIONS

**Buyer** means the entity or person who purchases the Products and/or Services from the Seller.

**Conditions** means these General Conditions of Sale of Hempel Products and/or Services.

**Contract** means the agreement between the Seller and the Buyer for the sale and purchase of the Products and/or Services incorporating these Conditions, including all separate warranty agreements or performance guarantees.

**Intumescent Products** means those Products comprising intumescent paints, coatings and related products as well as their packaging, sold by the Seller to the Buyer under the Contract.

**Products** means all paints, coatings and related products including Intumescent Products, as well as their packaging, sold by the Seller to the Buyer under the Contract.

**Seller** means the Hempel entity accepting the order from the Buyer and issuing the invoice for the Products and/or Services.

**Services** means the technical advice and other services being provided by the Seller to the Buyer under the Contract.

## 2. SCOPE

(a) These Conditions set out the terms and conditions on which the Seller supplies the Products and/or performs the Services to the Buyer unless otherwise expressly agreed in writing by the Seller.

(b) Any terms and conditions which the Buyer purports to apply in a purchase order, confirmation letter or any other document provided by the Buyer shall not form part of the Contract. The Seller shall not be bound by conflicting purchasing conditions provided by the Buyer even if the Seller has not explicitly rejected or contradicted such conflicting conditions.

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

## 3. QUOTATIONS AND ORDER ACCEPTANCE

The Seller's quotation is an invitation to the Buyer to make an offer and does not constitute a binding offer to the Buyer. By ordering or by accepting the quotation (e.g. by issuing a purchase order), the Buyer shall be deemed to have made an offer to purchase the Products and/or the Services from the Seller subject to these Conditions. The Seller is only bound by such offer

when the order is accepted in writing by the Seller (e.g. by issuing an order confirmation) or by delivering the Products and/or Services.

## 4. PRICES AND PAYMENT TERMS

(a) The price for the Products and/or Services shall be the price agreed by the Seller in writing. All prices exclude taxes, customs and import tariffs and duties and delivery costs that the Buyer must pay. The price for Products includes the Seller's standard packaging but is excluding other fees e.g. tinting fee, small order fee etc.

(b) Prices are based on raw materials, manufacturing and other related costs incurred by the Seller. In the event of an increase in such costs to the Seller of 5% (five percent) or more between the conclusion of the Contract and the date of agreed delivery, the Seller reserves the right to adjust the prices to directly reflect such changes.

(c) The Buyer must pay the invoice amount in full within 30 (thirty) days from the date of the invoice or as otherwise stated in the invoice. Payment by the Buyer must be made in the currency specified in the invoice. The Seller shall be entitled to charge interest on overdue payments at 5% (five percent) per annum (calculated on a monthly pro rata compounding basis) above the base rate of the Central Bank in the country of the Seller's domicile or if less, the highest rate permissible by relevant mandatory law.

(d) The Buyer shall indemnify the Seller for all reasonable costs and expenses (including legal fees) that the Seller may incur in collecting overdue amounts.

(e) The Buyer may not withhold, set-off or deduct amounts owed to the Seller in respect of claims or disputed amounts.

## 5. TERMINATION AND SUSPENSION

(a) The Seller is entitled to terminate the Contract with immediate effect and with no prior notice if the Buyer is in material breach of its obligations in these Conditions or the Contract. Material breach shall include but not be limited to situations where the Buyer: (i) does not comply with clause 10 in these Conditions, (ii) ceases trading, (iii) fails to meet its payment obligations when they fall due, (iv) appears to be unable to pay a debt (v) seeks a composition with its creditors, or (vi) is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution or has an administrator or similar officer appointed over all or any substantial part of its assets.

(b) In the event that the Seller terminates the Contract, all outstanding instalments for delivered Products

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and/or Services shall be deemed due and payable immediately.

- (c) The Seller shall be released from its obligations under these Conditions from the date of termination except in respect of warranties for Products and/or Services already supplied and/or performed and fully paid for as at the date of termination.
- (d) The Seller's obligation to deliver Products and/or Services shall be suspended if the Buyer has failed to make due payment within 14 (fourteen) days of the due date of any amount that the Buyer owes the Seller under the Contract or any other agreement with the Seller. Such suspension of delivery shall not affect the Seller's other rights under these Conditions. The Seller is not obliged to resume deliveries until the Buyer has paid all overdue amounts, including all expenses and any accrued interest.

## 6. DELIVERY, TITLE AND RISK

- (a) The Products are to be delivered "DAP" (Incoterms 2020) at the place and date specified in the order and the Seller reserves the right to invoice the Buyer for all delivery costs.
- (b) The risk for the Products shall pass to the Buyer at the earlier of (i) when the Products are delivered to the Buyer, the Buyer's agent, or a person that the Buyer has authorised to accept delivery, or (ii) the agreed date of delivery, if the Buyer fails to take delivery as required under the Contract.
- (c) The Seller shall retain title and ownership of the Products until receipt of payment in full and until then the Buyer shall: (i) hold the Products on a fiduciary basis as the Seller's bailee; (ii) store the Products at no cost to Seller separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property; (iii) not destroy, alter or obscure any trademark or packaging on or relating to the Products; and (iv) maintain the Products in satisfactory condition and keep them insured on Seller's behalf for their full price against all risks. The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from 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 its 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.
- (d) The Buyer shall indemnify the Seller against all costs and expenses incurred by the Seller as a result of the Buyer's failure:

- (i) to take delivery on the agreed date, or if no such date is specified, within 7 (seven) days of the Seller notification that the Products are ready for collection; or

- (ii) to provide adequate instructions, documents, licences or consents required to enable the applicable Products and/or Services to be delivered on time.

- (e) If the Seller has agreed to deliver the Products and/or Services on a specific date and fails to do so, other than for reasons of Force Majeure, the Buyer shall be entitled to cancel such (part of the) order which has not been delivered. The Buyer accepts such right to cancel as its only remedy and expressly waives any other rights. The Seller has the right to communicate any delay or expected delay in delivery to the Buyer in writing together with new delivery date(s). If the Buyer cannot accept the new delivery date(s), Buyer remains entitled through written notice to Seller to cancel the order in part or in full.

- (f) The Buyer shall thoroughly inspect all Products on delivery and notify the Seller as soon as reasonably practicable (within 48 hours of delivery) of any apparent damage to, defect or shortage in, any Products. If the Buyer fails to give such notice, the Products shall be deemed to be in all respects in accordance with the relevant purchase order and accepted by the Buyer, save to the extent that there is a latent defect which is not reasonably obvious on inspection.

- (g) It is the Buyer's responsibility to obtain all licences, exchange control documents and other consents needed for the import and use of the Products. The Buyer shall not be discharged from its obligations under these Conditions if the Buyer fails to obtain a licence or other consent(s).

## 7. FORCE MAJEURE

- (a) The Seller is released from its obligation to deliver the Products and/or Services on the delivery date, if events beyond its reasonable control prevent the Seller from performing its obligations (Force Majeure). Should such events continue to prevent the Seller from performing its obligations for 60 (sixty) consecutive days, either party may cancel the Contract.

- (b) The Seller may withhold, reduce or suspend delivery of the Products and/or Services to reasonably allocate its supply capacity between the Buyer and its other customers if Force Majeure prevents the Seller from delivering all the Products and/or Services and fully complying with orders from its other customers. In such event, the Buyer is entitled to cancel the undelivered order(s). This clause sets

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out the only remedies available to the Parties in the event of Force Majeure.

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

### *The Seller's Liability for the Products*

(a) In the event that a separate stand-alone Seller warranty for the Product forms part of or is issued in connection with the Contract by the Seller, then to the extent that a conflict exists between it and these Conditions, then the relevant terms of such stand-alone Seller warranty shall apply to the exclusion of this Clause.

(b) The Seller warrants that as at delivery and for the earlier of a period of 12 (twelve) months from the date of delivery or the expiration of the applicable shelf life, each Product will conform to the applicable Product Data Sheet and/or specification as at delivery and the Seller shall have no other liability under this Contract (express or implied), in tort or otherwise for the quality, performance, merchantability or fitness for any purpose of the Products.

(c) The Seller's warranty does not include defects or damage that occurs 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 (or where relevant, its subcontractor) has:

(i) prepared all surfaces before coating, coated the object correctly and maintained them after coating, all in accordance with the Product specifications and any guidance issued by Seller;

(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 (ten) 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 and access to inspect the Products, the area of their application and allows the Seller to inspect any maintenance or other relevant records (which the Buyer must keep in accordance with good practice);

(v) complied with its obligations under these Conditions, including making timely payment of the purchase price, and

(vi) stopped using the Products as soon as the Buyer detected or could have detected the defect.

(d) For Intumescent Products, the Seller shall not be liable for breach of the warranty in this clause 8 if the applicable non-conformity arises:

(i) because the Buyer alters the relevant Intumescent Product, or mixes or uses it in conjunction with any unapproved substance;

(ii) in whole or in part, due to wilful damage, abnormal or highly variable environmental conditions; or

(iii) in whole or in part, due to any negligence, misuse of the relevant Intumescent Product, inadequate specification of coating thickness and/or critical/limiting temperature or inadequate or inappropriate surface preparation or coating application by any person other than the Seller or its agents.

(e) In the event of a breach of warranty under this clause 8, the Seller must at its own option, either replace the Product or refund the price of the defective Product in full. The Buyer is not entitled to any other remedy. 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.

### *The Seller's Liability for Services*

(f) The Seller is only liable for technical advice, instructions and other information about the use of the Products or other services provided by the Seller or its 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.

### *The Seller's Liability for Services for Intumescent Products*

(g) The Seller shall have no liability for any advice or other service the Seller (or any of its employees, agents and sub-contractors) provides in relation to any Intumescent Product(s) for which the Buyer has

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not paid separately from any other Intumescent Product or Service, such free advice or service to be provided at the Seller's discretion and not to be relied upon by the Buyer.

- (h) The Seller shall only be liable if such advice or service has been given negligently taking into account the information, equipment and knowledge readily available to the Seller at the time (including that provided by the Buyer), but the Buyer expressly acknowledges that the Intumescent Products may be used for uses outside of the scope of the Seller's knowledge or expertise; variations in environment, changes in procedures or use, or the extrapolation of data may cause unsatisfactory results; and that the Intumescent Products are intended for use by buyers having relevant skill and know-how in the proper use of such type of products.

## *Limitation of Liability*

- (i) The Seller's liability to the Buyer shall not exceed the invoiced price for the Products and/or Services, except that in respect of Intumescent Products (and related Services) only, if the remedies available under clause 8(e) are unenforceable under applicable law, Seller's liability shall in no event, exceed 2 (two) times the invoiced price.
- (j) The Seller shall not be liable for any loss of profit or earnings, loss of time, loss of goodwill or loss of use of vessels, machinery or equipment. In no circumstances shall the Seller be liable for any special or consequential/indirect loss or damage whatsoever.
- (k) The Seller shall not be liable for any infringement of a third party's intellectual property rights caused by the Buyer's use of the Products.
- (l) Any exclusions or limitations of liability under these Conditions in favour of the Seller are agreed to be extended for the benefit of all companies and/or individuals within the Hempel Group.
- (m) Subject to applicable law as regards liability for 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 unless the Seller has been notified in writing of such claims within 36 (thirty-six) months of delivery.

## **9. INTELLECTUAL PROPERTY RIGHTS**

The Seller (or Hempel A/S) is and remains the owner of all intellectual property rights related to the Products and/or Services, including know-how, patents, patent applications, inventions, trademarks, technical information, documentation, data as well as any copyright relating hereto. The Buyer does not acquire any rights to any intellectual property rights or other

deliverables specifically developed by Seller to fulfil the Contract, such rights shall remain the exclusive property of the Seller (or Hempel A/S).

## **10. COMPLIANCE, EXPORT CONTROL AND SANCTIONS**

- The Buyer undertakes that it is and shall in connection with this Contract, remain in compliance with applicable laws and regulations, including but not limited to those relating to anti-bribery and corruption, and sanctions provisions and export control regulations of the UN, US, UK and EU. If the Buyer is in breach of this clause 10, the Seller is entitled to either suspend or terminate the Contract at no liability or cost to the Seller.

## **11. MISCELLANEOUS**

- (a) The Buyer may not assign its rights and obligations under the Contract.
- (b) The Contract establishes neither a partnership nor a joint venture between the Seller and the Buyer, and neither of the parties shall be construed as partner or other business associate of the other.
- (c) A waiver of any right or remedy under this Contract shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (d) A person who is not party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999, or similar applicable mandatory law, to enforce any term of this Contract.

## **12. CHOICE OF LAW AND JURISDICTION**

- (a) Any dispute arising out of the Contract shall be governed, construed and enforced in accordance with the laws of People's Republic of China which, for this purpose, shall exclude Hong Kong and Macau Special Administrative Regions and Taiwan (the "PRC"). Where there is no publicly promulgated PRC law on the subject, international practice and generally accepted principles of international law shall prevail. In case of sales by a HEMPEL company in Hong Kong, the Contract and any supply under the terms thereof shall be governed by the laws of Hong Kong SAR. Where there is no publicly promulgated Hong Kong SAR law on the subject, international practice and generally accepted principles of international law shall prevail.
- (b) Any dispute shall be subject to arbitration and shall be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration in accordance with CIETAC's arbitration rules in effect at the time of applying for arbitration. The place of arbitration shall be Shanghai. In case of sales by a HEMPEL company in Hong Kong, any

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dispute, controversy or claim arising out of or in connection with the Contract, including any disputes as to validity of the Contract, shall be submitted to the Hong Kong International Arbitration Centre for arbitration in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules in effect at the time of applying for arbitration. The place of arbitration shall be Hong Kong, the proceedings shall be conducted in E Chinese. The arbitral award shall be final and conclusive and binding on the parties.

- (c) The Buyer, however, expressly agrees that the Seller may take legal action in the courts of the Buyer's country of domicile, including for debt collection and to obtain security for the Seller's claims under the Contract. The security can include admiralty arrest proceedings against a vessel named in the quotation or the order, any sister ships or, if permitted under local law, other vessels under the same or associated management or control.