

GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE
INTUMESCENT PAINTS

1. DEFINITIONS

In these terms and conditions the following terms have the following meanings:

"Buyer" means the person specified overleaf as the buyer.

"Contract" means any contract between the Buyer and the Seller for the sale and purchase of any Product(s), which shall be comprised of these General Conditions and the contents of any order confirmation sent by the Seller to the Buyer only.

"Force Majeure Event" means an event or circumstance beyond the reasonable control of a party, including fire, flood, abnormal weather conditions, accidents (other than those caused by the affected party's negligence), acts of God, war, riot, civil disorder and strikes.

"Products" means intumescent paints, coatings and related products, as well as their packaging.

"Seller" means Hempel A/S or such other person named overleaf as the seller.

"Seller's Group" means the Seller, its holding companies and the subsidiaries, subsidiary undertakings and associated companies from time to time of such holding companies.

"Specification" means any written specification relating to the applicable Product(s) provided by the Seller to the Buyer with any order confirmation.

In these terms and conditions, "includes" or "including" will be deemed to be followed by the words "without limitation"; and a "person" includes any individual, company, firm, government, state or agency of any state or any undertaking.

2. SCOPE

(a) Every contract between the Buyer and the Seller for the sale and purchase of any Product(s) shall be subject to these General Conditions, to the exclusion of all other terms and/or conditions which the Buyer purports to apply, including under any purchase order or similar document, and/or conditions (all of which the Buyer hereby explicitly disclaims), and each party acknowledges (save in the case of fraud or fraudulent concealment) that:

- (i) a Contract constitutes the entire and only agreement between the parties relating to the subject matter of that Contract; and
- (ii) it has not been induced to enter into a Contract in reliance on, nor has it been given, any representation, undertaking or other statement of any nature whatsoever other than those expressly set out in that Contract.

(b) The Buyer may not assign or transfer any benefit arising under any Contract.

(c) Any provision of any Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall, to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the other provisions of the Contract, and the remainder of such provision, shall not be affected.

3. ORDERS AND FORMATION OF CONTRACT

(a) To place an order for any Product(s), the Buyer must submit a purchase order therefor in writing to the Seller.

(b) Each purchase order for any Product(s) so placed by the Buyer with the Seller shall be deemed to be an offer by the Buyer to purchase the Product(s) subject to these General Conditions.

(c) No purchase order submitted by the Buyer shall be deemed to be accepted by the Seller unless acceptance is confirmed in writing by the Seller's authorised representative. If and once accepted by the Seller, a Contract for the sale and purchase of the ordered Product(s) shall be deemed to be formed between the parties.

4. PRICES AND QUOTES

(a) Any quote provided by the Seller to the Buyer in relation to any Product(s) shall be valid for 30 days, unless otherwise set out therein or agreed in writing.

(b) Unless expressly stated otherwise, the quoted price for any Product excludes taxes (including value added tax) and duties as well as any loading/unloading, transport, import/export and delivery costs, for which the Buyer will be responsible. All prices include the Seller's costs for standard packing, but not the costs for pallets or crating.

5. PAYMENTS, TERMINATION, SUSPENSION AND LICENCES

(a) The Seller may invoice the Buyer for any Product(s) at any time after their delivery to the Buyer.

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

- (i) 1.0%, compounding monthly, above the then current 1-month EURIBOR rate; and**
- (ii) 2%, compounding annually, above the then current annual discount rate of the Central Bank in the country of the Seller's domicile.**

The Buyer shall indemnify and keep indemnified the Seller against all costs and expenses that the Seller incurs in connection with the collection of overdue amounts.

(c) **No payment shall be deemed to have been received until the Seller has received cleared funds. All payments received by the Seller will be non-refundable.**

(d) The Seller may appropriate any payment made by the Buyer to the Seller to such of the Products sold by the Seller as the Seller thinks

GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE
INTUMESCENT PAINTS

- fit, despite any purported appropriation by the Buyer.
- (e) Without prejudice to any other right or remedy available to the Seller, or any right or remedy available to the Buyer under clause 8 below with respect to any Product(s) delivered to the Buyer, the Seller may terminate any Contract on written notice, and/or suspend any further deliveries under any Contract, upon the happening of any one or more of the following events:
- (i) the Buyer fails to pay any amount due under a Contract for a period of 14 days after the due date for payment;
 - (ii) the Buyer (if an individual or partnership) has a bankruptcy order made against it or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation;
 - (iii) the Buyer is unable to pay its debts as they fall due; has a receiver, manager, administrator or administrative receiver appointed in respect of its undertaking or any part thereof; makes an arrangement or composition with its creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors; ceases, or threatens to cease, to carry on business;
 - (iv) a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
 - (v) an encumbrancer takes possession of any of the property or assets of the Buyer;
 - (vi) any circumstance arises in relation to the Buyer which is analogous to any of those set out in clause 5(c)(i)-(v) in any jurisdiction across the world;
 - (vii) the Seller reasonably apprehends that any of the events set out in clauses 5(e)(i)-(vi) above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
 - (viii) the Buyer is in material breach of any Contract or other agreement with any member of the Seller's Group.
- (f) Notwithstanding any other provision to the contrary, on termination of any Contract (howsoever arising) all payments payable to the Seller under that Contract shall become immediately due and payable by the Buyer and the Seller shall be under no obligation to make any further deliveries of any Products.
- (g) Without prejudice to its other rights or remedies, the Seller may suspend the delivery of any Product(s) if the Buyer fails to pay any amount when due under any Contract or other agreement with the Seller
- until all outstanding payments (including any expenses and accrued interest) have been made.
- (h) It is the Buyer's exclusive responsibility to obtain all licences, exchange control documents and other consents needed for the transport, export/import and use of any Product. The Buyer shall not be discharged from any of its obligations under any Contract if it fails to obtain any of the foregoing.
- 6. DELIVERY**
- (a) The Products will be delivered to the Buyer "Ex Works" (Incoterms 2010) at the place named overleaf, unless (and to the extent) expressly otherwise agreed in writing.
- (b) The Buyer shall indemnify and keep indemnified 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 date stated in the relevant order confirmation, or if no such date is specified, within seven days of the Buyer notifying the Seller that the applicable Product(s) are ready, unless otherwise agreed in writing; or
 - (ii) to provide adequate instructions, documents, licences or consents required to enable the applicable Product(s) to be delivered on time,
- (c) If the Seller agrees to deliver any Product on a specific date and fails to do so, the Buyer:
- (i) shall be entitled to cancel the whole order, or any part thereof, which has not been delivered; and
 - (ii) shall have no further remedy in respect of that Product and expressly waives all other rights in relation thereto.
- (d) The Buyer shall thoroughly inspect all Products upon delivery and notify the Seller as soon as reasonably practicable (and within no more than 48 hours of delivery) of any apparent damage to, or defect or shortage in, any Product(s). If the Buyer fails to give such notice, the Product(s) shall be deemed to be in all respects in accordance with the relevant order and accepted by the Buyer.
- (e) Where a sample of any Product(s) is inspected by the Buyer upon delivery, it will be inspected solely to enable the Buyer to satisfy itself of the quality thereof and not so as to constitute a sale by sample.
- 7. PASSING OF RISK AND TITLE AND RETURNS**
- (a) The Seller's liability for any Product(s) will pass from the Seller to the Buyer at the earlier of the following two points in time:
- (i) when the Product(s) are delivered in accordance with these General Conditions, or

GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE
INTUMESCENT PAINTS

- (ii) **the agreed date of delivery of the Product(s), if the Buyer fails to take delivery as required under the Contract, in which case the Seller shall be deemed to have fulfilled its delivery obligations under the Contract and (without prejudice to its other rights and remedies) the Seller may:**
- (A) **store or arrange for the storage of the Product(s) until actual delivery and charge the Buyer for all related costs and expenses (including storage and insurance); and/or**
- (B) **following written notice to the Buyer, sell any or all of the Product(s) at the best price reasonably obtainable in the circumstances, and charge the Buyer for any shortfall below the price thereof under the Contract.**
- (b) **The Seller shall remain the owner of each Product until it has received full payment for all Products to which the applicable Contract relates, whether or not any Product has been delivered to the Buyer.**
- (c) **The Buyer may resell a Product before ownership of it has passed to the Buyer solely on the following conditions:**
- (i) **any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Seller accordingly; and**
- (ii) **any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale. If the Buyer resells the Product to a third party before the Seller receives full payment, the Buyer shall ensure that the proceeds of the sale are held in trust for the Seller and are not mixed with other moneys or paid into an overdrawn bank account and shall at all times be identifiable as the Seller's moneys.**
- (d) **Until ownership of a Product has passed to the Buyer and unless the Buyer resells the Product before ownership passes to it (as envisaged in clause 7(c)), the Buyer must:**
- (i) **hold a Product on a fiduciary basis as the Seller's bailee;**
- (ii) **store the Product (at no cost to the Seller) separately from all other products of the Buyer or any third party in such a way that it remains readily identifiable as the Seller's property in a place notified to the Seller;**
- (iii) **not destroy, deface or obscure any identifying mark or packaging on or relating to the Product;**
- (iv) **not subject the Product, or permit it to be subject to, any mortgage, charge, pledge or lien or any other third party interest;**
- (v) **maintain the Product in satisfactory condition, insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request, the Buyer shall produce the policy of insurance to the Seller; and**
- (vi) **hold any proceeds of the insurance referred to in clause 7(d)(iv) on trust for the Seller and in accordance with clause 7(a)(ii).**
- (e) **The Seller shall be entitled to recover payment for any Product(s) delivered hereunder notwithstanding that ownership of the Product(s) has not passed from the Seller.**
- (f) **The Buyer grants, or shall procure the grant to, the Seller (and its employees, agents and sub-contractors) an irrevocable licence at any time to enter any premises where any Product is or may be stored in order to inspect it, and, in any of the circumstances set out in clause 5(e), to recover it.**
- (g) **All sales are final. No Product will be accepted for return, and the Buyer will not be entitled to credit for any returned Product, without the Seller's prior written consent or as expressly set out in these General Conditions, in which case the Buyer shall return the Product promptly, in good condition and carriage paid unless otherwise agreed.**
- THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 8
- 8. THE SELLER'S WARRANTY AND LIMITATIONS OF LIABILITY**
- (a) **The following provisions of this clause 8 set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of the terms of any Contract and any representation, statement or tortious act or omission, including negligence, arising under or in connection with any Contract.**
- The Seller's Liability for the Products*
- (b) **The Seller warrants that (subject to the other provisions of these General Conditions) upon delivery and for a period of 12 months from the date of delivery (or upon the expiration of the applicable shelf life, if earlier), each Product will conform to the applicable Specification.**
- (c) **The Seller shall not be liable for a breach of the warranty in clause 8(b) unless the Buyer:**
- (i) **provides full details in writing of the alleged defect in the relevant Product within 30 days of the date when the Buyer first became aware or could reasonably have become aware of the defect;**
- (ii) **allows the Seller a reasonable opportunity to inspect the relevant Product, the area of its application (if applicable) and any maintenance or other relevant records (which the Buyer shall keep in accordance with good practice);**
- (iii) **has paid the total price for the relevant Product by the due date for payment; and**

GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE
INTUMESCENT PAINTS

- (iv) has stopped using the relevant Product as soon as it detected or should reasonably have detected the defect.
- (d) The Seller shall not be liable for a breach of the warranty in clause 8(b) if the applicable non-conformance arises:
- (i) in whole or in part because the Buyer fails to follow the Seller's oral or written instructions or guidance in relation to the relevant Product, including as to its storage, transport, use and maintenance and (in their absence) good trade practice;
 - (ii) because the Buyer alters the relevant Product, or mixes or uses it in conjunction with any unapproved substance;
 - (iii) in whole or in part due to mechanical damage, welding or other heating, bacterial attack, pollution, electromechanical actions, damage during repair, deterioration beneath applied coatings or friction to any surface or material to which the relevant Product is applied, in each case except for ordinary wear and tear as applicable, wilful damage, abnormal or highly variable environmental conditions; or
 - (iv) in whole or in part due to any negligence, misuse of the relevant Product 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 the warranty in clause 8(b), the Seller shall at its own option either replace the non-conforming Product or refund the price of such Product. **The Buyer is not entitled to any other remedy once the Seller has replaced or refunded the price for any defective Product. The Seller may suspend subsequent deliveries of any Product until the validity of the Buyer's claim has been finally determined.**
- (f) If the Seller complies with clause 8(e) it shall have no further liability for a breach of the warranty in clause 8(b) in respect of the relevant Product and the Buyer expressly acknowledges that it may not recover all of its losses should any Product be found not to conform and should maintain appropriate insurance to cover such circumstances.
- (g) Any replacement Product supplied by the Seller under clause 8(e) will be subject to the same warranties as set out in these General Conditions for the unexpired portion of the 12 month period applicable to the Product which is replaced (unless a shorter shelf life applies).
- (h) It is for the Buyer to satisfy itself of the suitability of the Products for its own particular purpose and it shall be deemed that the Buyer has done so, at its own discretion and risk.

The Seller's Liability for Advice or Other Services

- (i) 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 Product(s) for which the Buyer has not paid separately from any other 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.
- (j) The Seller shall only be liable for any advice or other service for which the Buyer has paid, 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, but the Buyer expressly acknowledges that the 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 Products are intended for use by purchasers having skill and know-how in the industry in which products of a similar type are used.

General Limitation of Liability

- (k) Save as expressly set out in these General Conditions all warranties, conditions and other terms implied by statute, common law or otherwise are excluded from the Contract (save for the condition implied by section 12 of the Sale of Products Act 1979) to the maximum extent permissible in law.
- (l) To the extent these liabilities cannot lawfully be limited or excluded, nothing in these General Conditions purports to limit or exclude the liability of the Seller for fraud, fraudulent misrepresentation, or for death or personal injury caused by the Seller's negligence, or for any other liability which cannot lawfully be limited or excluded, and this clause 8 shall be construed accordingly.
- (m) The parties agree that the Seller's aggregate liability to the Buyer in contract, tort (including negligence), misrepresentation or howsoever otherwise caused arising from or in connection with any Contract shall not exceed two times the invoiced price for the Products (or services if applicable) supplied to the Buyer under that Contract. This provision only applies to the matters referred to in clause 8(e) to the extent clause 8(e) is unenforceable.
- (n) The Seller shall not be liable to the Buyer in connection with any Contract for:
 - (i) loss of profits, loss of operations, loss of data, loss of contracts, loss of market shares, loss of goodwill;
 - (ii) increased costs or expenses; or
 - (iii) any type of special, indirect or consequential loss (including such loss or damage suffered by the Buyer as a result of any action brought by a third party) even if such loss was

**GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE
INTUMESCENT PAINTS**

reasonably foreseeable or the Seller had been advised of the possibility of the Buyer incurring it.

- (o) The Seller shall not be liable for any infringement of a third party's intellectual property rights caused by the Buyer's use of any Product.
- (p) Without prejudice to clause 8(c)(i), the Seller shall have no liability to the Buyer howsoever caused arising out of in connection with any Contract unless the Seller has been notified in writing of such claim within twenty-four (24) months of the date it became aware of the circumstances giving rise to the liability or the date it ought reasonably to have become so aware.
- (q) Any exclusions or limitations of liability in any Contract in favour of the Seller are agreed to be extended for the benefit of all entities within the Seller's Group (and each of their employees, agents and sub-contractors).

9. FORCE MAJEURE

- (a) The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract because of any delay in performing or any failure to perform any of the Seller's obligations under any Contract to the extent the delay or failure is attributable to a Force Majeure Event. The Seller may allocate its supply capacity between the Buyer and its other customers at its discretion if the Seller is unable, as a result of a Force Majeure Event, to fulfil any of its orders in accordance with their terms.
- (b) If the Seller fails to make delivery of any Product in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.
- (c) If the circumstances leading to the delay in delivery are still continuing 30 days after the Seller has given notice, then either party may give written notice to the other to terminate the Contract the performance of which is affected by the Force Majeure Event.
- (d) If a Contract is terminated pursuant to clause 9(c), the Seller will refund any payment which the Buyer has already made on account of the purchase price of Products the subject of the relevant Contract (subject to deduction of any amount the Seller is entitled to claim from the Buyer) but the Seller will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

10. GENERAL

- (a) The Buyer agrees that it has no other rights of recourse against the Seller other than those expressly stated in these General Conditions.
- (b) No variation to these General Conditions or the terms of any Contract shall be effective unless expressly agreed in writing and signed by an authorised signatory of both parties.

- (c) Save for such employee as the Seller may specify in writing as an authorised representative, no person is authorised to accept, confirm or vary any order, nor to make any representation or promise on the Seller's behalf.
- (d) Each right or remedy of the Seller under the Contract is cumulative and shall be construed without prejudice to any other right or remedy of the Seller however arising.
- (e) No failure or delay on the part of either party in exercising any right, power or privilege under these terms or conditions shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No breach of any provision of these General Conditions shall be waived or discharged except with the express written agreement of the parties.
- (f) Save as set out in clause 8(q), the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded from these General Conditions and all Contracts.
- (g) Any communication or notice given under or in connection with any Contract shall be in writing and shall be delivered personally or sent by airmail to the address overleaf and marked for the attention of the Company Secretary and shall be deemed to have been duly given or made as follows:
 - (i) if personally delivered, upon delivery at the address of the relevant party; or
 - (ii) if sent by first class post, five business days after the date of posting.

11. CHOICE OF LAW AND JURISDICTION

- (a) The Contract and any dispute or claim whatsoever relating to it or its formation shall be governed by and construed in accordance with English law.
- (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 shall apply to any Contract.

12. ARBITRATION

- (a) Any dispute arising out of or in connection with any Contract, including any question regarding its existence, validity, formation or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.
- (b) The number of arbitrators shall be [three].
- (c) The seat, or legal place, of arbitration shall be London.
- (d) The language to be used in the arbitral proceedings shall be English.