

# General Conditions of Sale, Delivery and Service effective May 2020



## 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.
- (d) "The Buyer" means the company specified overleaf as the buyer.
- (e) "The Vessel(s)" means the vessel(s) named overleaf.

## 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 must be made in the currency specified in the invoice.
- (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% monthly above the current monthly base rate of the Seller's bank, or
  - (ii) 2% annually above the annual discount rate of the Central Bank in the country of the Seller's domicile.The Buyer shall indemnify the Seller for all 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. 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 administration is filed in respect of the Buyer.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. However, in such circumstances the Seller shall be obliged to give a discount for early payment of the accelerated instalments. The discount shall be calculated at the greater of the following two rates:
  - (i) 1.5% monthly above the current monthly base rate of the Seller's bank, or
  - (ii) 2% annually above the annual discount rate of the Central Bank in the country of the Seller's domicile.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 licences, 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 licence or other consents.

## 6. DELIVERY AND FORCE MAJEURE

- (a) The Products are delivered "Ex Works" (Incoterms 2010) at the place named overleaf.
- (b) The Buyer shall pay all costs incurred by the Seller as a result of the Buyer's failure to take delivery either:
  - (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.
- (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 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).

## 7. PASSING OF RISK AND TITLE AND RETURNS

- (a) The Seller's liability for the Products passes from the Seller to the Buyer at the earlier of the following two points in time:
  - (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.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 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.
- (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.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 property rights caused by the Buyer's use of the Products.
- (i) Any exclusions or limitations of liability in this Contract in favour of the Seller are agreed to be extended for the benefit of all companies and/or individuals within the Hempel Group. 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) Subject to law as regards 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. 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, UN, US, UK, EU sanctions and export control restrictions. If the Buyer is in breach of this clause, the Seller can choose either to suspend or terminate the Contract at no liability or cost to the Seller.

## 10. CHOICE OF LAW AND JURISDICTION

- (a) For sales to Buyers with domicile in the country of Seller's domicile, the law of Seller's domicile shall govern the Contract and the courts of Seller's domicile shall have sole jurisdiction over disputes that arise from the Contract.
  - (b) For sales to Buyer's with domicile in a country outside the country of Seller's domicile, English law shall govern the Contract and disputes that arise from the 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. The number of arbitrators shall be three. In cases where neither the claim nor the counterclaim exceeds USD 250 000, the number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language in the arbitral proceedings shall be English.
- 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 2010 are to be considered an integral part of these General Conditions unless they are inconsistent with the above terms.
- Regardless of the above, the Buyer expressly agrees that the Seller may take action in another jurisdiction to obtain security for the Seller's claims under the Contract. 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.

- (e) 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.