

# General Terms and Conditions of Delivery of Siegwerk Switzerland AG

## **1. Scope of Validity**

- 1.1 Unless otherwise agreed in writing, these General Terms and Conditions of Delivery ("Conditions of Delivery") shall exclusively apply for all deliveries and performances made by Siegwerk Switzerland AG ("Siegwerk"). Any general terms and conditions of the beneficiary ("Purchaser") deviating from these Conditions of Delivery are non-binding for Siegwerk, even if Siegwerk has not expressly contradicted them or if the Purchaser insists to purchase only under his terms. This shall also apply if Siegwerk has delivered the goods, rendered services or accepted payments without reservation. As a precaution, Siegwerk hereby dissents with conflicting terms of the Purchaser.
- 1.2 These Conditions of Delivery amend any framework agreements entered into by the parties. In case deviating terms are individually agreed on, the Conditions of Delivery shall be applicable subordinated and supplemental.

## **2. Conclusion of Contract**

The offers made by Siegwerk are non-binding. A contract is only concluded with written order confirmation by Siegwerk or by Siegwerk's execution of the order.

## **3. Prices**

- 3.1 Siegwerk's prices are quoted ex works. The value added tax (VAT) in the statutory amount valid on the day of invoicing shall be payable additionally.
- 3.2 In the event that the customary costs of a product rise by more than 10%, Siegwerk is entitled to unilaterally raise its prices, considering equity and the respective change in costs. This right does not exist, if the delivery date lies within 3 months of the conclusion of the respective contract.
- 3.3 If Siegwerk raises the price due to an increase in costs, the Purchaser has the right to rescind from the contract, at which the parties each have to bear their own costs of the rescission. The Purchaser is obliged to declare the rescission of the contract to Siegwerk in writing within 2 weeks after receipt of the information about the price increase. Otherwise, the price increase shall be deemed approved.

## **4. Deliveries, Delivery Dates, Delay in Delivery**

- 4.1 Partial deliveries and performances are permitted.
- 4.2 The delivered quantities agreed upon are subject to the following tolerances within which the Purchaser is not entitled to file claims for incorrect quantities: (a) order quantity up to 50 kg = +/- 20%, (b) order quantity up to 500 kg = +/- 10%, and (c) order quantity above 500 kg = +/- 5%. Specially manufactured goods are subject to special agreements.
- 4.3 Delivery dates are non-binding, if not explicitly declared as binding by Siegwerk. In the event that Siegwerk exceeds an agreed date of delivery or performance or in the event that Siegwerk does not meet another contractual obligation in time, the Purchaser is obligated to set an appropriate period of grace.
- 4.4 Should the delivery or performance not be made within the period of grace and should the Purchaser for this reason wish to make use of his right to rescind from the contract or claim damages instead of delivery/performance, he is obliged to inform Siegwerk of this beforehand, granting another reasonable period of grace and demanding delivery or performance.

## **5. Place of Performance/Delivery, Transfer of Risk**

The place of performance/delivery as well as the transfer of risk shall be deemed defined in accordance with the Incoterms of the International Chamber of Commerce (Incoterms 2010). Has no individual agreement been reached, the term "ex works" (factory Barga) shall apply.

## **6. Retention of Title**

Title to the delivered goods remains with Siegwerk until all claims deriving from the business relationship with the Purchaser have been fully paid (retained goods).

## **7. Force Majeure**

In cases of force majeure or other unforeseeable circumstances that impede the delivery or render it impossible for Siegwerk, the contractual obligations of both parties are suspended. In this case the agreed delivery times are postponed accordingly, until the force majeure event or the unforeseeable circumstance has ceased. Cases of force majeure are in particular: shortage of energy or raw materials, strikes in the party's own or third party site(s), lock-outs, official directives, non-effectuation of deliveries from third parties, operational disturbances and other circumstances that do not lie within the responsibility of one of the parties. The other party has to be notified immediately of the force majeure event.

## **8. Invoicing and Payment**

- 8.1 The Purchaser is obliged to pay the purchase price net within 30 days after the date of the invoice. Expenses and expenditures associated with the payment procedures shall be borne by the purchaser.
- 8.2 The Purchaser is entitled to offset its payment obligation only against undisputed or bindingly established claims.
- 8.3 If the Purchaser does not pay according to section 8.1, all accounts payable by the Purchaser to Siegwerk become due immediately, irrespective of the maturity and the Purchaser will be in default without further ado.

## **9. Claims for Defects and Liability**

- 9.1 The Purchaser is obliged to check the delivered goods promptly after receipt, if applicable by means of quick-tests. As far as no other legal notification terms are applicable, any notices of defects, have to be notified to Siegwerk in writing within 10 days of the receipt of the goods (complaints regarding latent defects have to be submitted to Siegwerk within 10 days of their discovery at the latest). Where the Purchaser does not submit his claim and notices of defects in time or not in the agreed written form (unduly), the delivery and performance made by Siegwerk shall be deemed defect-free. If the Purchaser accepts the goods or performance in cognizance of a defect, then he is entitled to the rights of defect and liability only in cases, where he has expressly reserved these rights in writing.
- 9.2 As far as the delivered goods or performance have a defect, Siegwerk is entitled, at its sole discretion, to replace or repair the goods. The Purchaser has to give Siegwerk the opportunity to do so within a reasonable period of time. If the replacement or repair fails, the Purchaser is entitled to rescind the contract (action for rescission) or to reduce the purchase price. If the value or the usability of the goods or performance is only insubstantially reduced, the Purchaser has only the right for reduction of the purchase price.
- 9.3 Furthermore, the Purchaser is entitled to claim damages and reimbursement of expenses necessary for the purpose of repair and/or replacement pursuant to statutory requirements. In addition, the provisions in sections 9.6 and 9.7 apply to claims for damages and reimbursement of expenses.
- 9.4 The Purchaser is not entitled to regress in excess of the statutory warranty with regard to title transferred and to defects against Siegwerk even if the Purchaser has made any agreements exceeding the statutory warranty with regard to title

transferred and to defects with his customers. This applies also to claims for reimbursement of expenses accordingly.

- 9.5 Siegwerk shall be liable for an indented use or a specific suitability only where explicitly agreed between the parties. Incidentally, the risk of use lies with the Purchaser.
- 9.6 Any claims for damages or reimbursement of expenses that the Purchaser might have against Siegwerk, their legal representatives, employees and agents, irrespective of their legal basis, are only valid in so far as Siegwerk, their legal representatives, employees and agents have acted wilfully or with gross negligence or if the infringed obligation is an essential part of the contract. Siegwerk's liability for negligent breaches of essential contractual obligations is limited to a maximum of CHF 1 million.
- 9.7 The exclusion or limitation of liability does not apply in cases where Siegwerk is liable for bodily injury or for damages to privately used property according to the Federal Law on product safety (Produkthaftpflichtgesetz) or according to other mandatory regulations.
- 9.8 The Purchaser's rights to claim rectification of a defect, damages or reimbursement for expenses are statute barred according to the statutory provisions.

## **10. Extraordinary Termination**

Notwithstanding any statutory or contractually agreed termination or rescission rights, Siegwerk is entitled to terminate or withdraw from the contract without notice for valid reasons. Valid reasons are, if composition of insolvency proceedings are initiated in respect of the Purchaser's assets, or if the Purchaser is in material breach of the contract, or if the financial situation of the Purchaser deteriorates considerably, or if unforeseeable incidents not caused by Siegwerk change the basis of the contract considerably.

## **11. Confidentiality and Advertising**

- 11.1 The Purchaser undertakes to treat as confidential any information, knowledge and materials, e. g. technical and other data, measured values, techniques, business experience, business secrets, know-how, compositions and other documentation received from Siegwerk or disclosed in any other way by a Siegwerk domain or the domain of another company of Siegwerk Group ("Information"), and shall not disclose such Information to third parties, but use it for the purpose of executing the respective contract only. The Purchaser undertakes to return all Information delivered to him in a tangible form such as documents, samples, specimens, or the like without undue delay upon Siegwerk's request without retaining any copies or notes. Siegwerk has ownership of and all intellectual property rights to the Information mentioned in this section.
- 11.2 The Purchaser may refer to the business relationship existing with Siegwerk in his informational and advertising materials with Siegwerk's express prior written consent only.

## **12. Miscellaneous**

- 12.1 The Purchaser may only assign rights under the contract to third parties upon Siegwerk's prior written consent.
- 12.2 The Purchaser is responsible for the compliance with statutory and administrative provisions regarding the import, transport, storage and use of the goods.
- 12.3 Should any of these provisions be partly or totally invalid, this shall have no effect on the validity of the remaining terms.
- 12.4 Modifications, amendments and/or cancellation of the contract or these Conditions of Delivery shall be made in writing.

## **13. Place of Jurisdiction and Applicable Law**

- 13.1 All legal relationships between the parties shall be governed by the laws of Switzerland to the exclusion of all conflict of law provisions.
- 13.2 Exclusive place of jurisdiction shall be Aarberg BE, Switzerland.

**IMPORTANT:** These "General Terms and Conditions of Delivery" have been translated from the German version of these conditions. This translation is a convenience translation and provided for the information and benefit of contractors only. In case of unclear interpretation of these General Terms and Conditions of Delivery the German version shall prevail in all respects.