

## **General Terms and Conditions of Delivery of Siegwerk Brasil Indústria de Tintas Ltda.**

### **1. Scope of Validity**

- 1.1 Unless otherwise agreed in writing, these General Terms and Conditions of Delivery ("Delivery Terms") shall exclusively apply for all deliveries and performances made by Siegwerk Brasil Indústria de Tintas Ltda. ("Siegwerk"). Any general terms and conditions of the recipient of the goods/services ("Purchaser") deviating from these Delivery Terms 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 Delivery Terms amend any framework agreements entered into by the Parties. In case deviating terms are individually agreed on, the Delivery Terms shall be applicable subordinated and supplemental.

### **2. Conclusion of Contract**

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

### **3. Prices**

- 3.1 The Value Added Tax (VAT) is included in the total value of the invoice. Other taxes will be charged additionally on the day of invoicing according to statutory provisions.
- 3.2 In the event that the customary costs of a product rise by more than 10%, Siegwerk is entitled raise its prices proportionally considering equity and the respective change in costs, according to articles 422 and 478 of the Brazilian Civil Code. 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 according to 3.2, 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 in a reasonable scope.
- 4.2 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.
- 4.3 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 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" shall apply.

### **6. Force Majeure**

In the event of Force Majeure or other exceptional and unforeseeable events for which Siegwerk is not responsible (together "Force Majeure"), which make delivery/performance impossible or substantially more difficult, Siegwerk may suspend the delivery/performance until the Force Majeure event has ceased. Cases of Force Majeure are in particular: shortage of energy or raw materials,

## General Terms and Conditions of Delivery of Siegwerk Brasil Indústria de Tintas Ltda.

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 and its expected duration.

### **7. Invoicing and Payment**

- 7.1 The Purchaser is obliged to pay the purchase price with a 2% discount within 14 days or net within 30 days after receipt of the invoice. Comment: We have maintained the text of clause 8.1, however the mandatory discount of 2% established in the clause is not a common business practice in Brazil.
- 7.2 The Purchaser is entitled to offset its payment obligation only against undisputed or bindingly established claims.
- 7.3 If the Purchaser is in arrears with a payment, all accounts payable by the Purchaser to Siegwerk become due immediately, irrespective of maturity, accrued by a non-compensatory fine of 2% (two percent) applicable once only over the overdue amount, plus late payment interest of 1% (one percent) per month, without prejudice of indexation by IGPM/FGV or alternatively IPC/FIPE if the first index is no longer available.

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

8.1 The Purchaser is obliged to inspect the delivered goods promptly after receipt, if applicable by means of quick-tests; and to notify the Seller about obvious defects immediately after receipt of the goods or latent defects immediately after their discovery. Any complaints, particularly notices of defects, have to be notified to Siegwerk in writing. Where the Purchaser does not submit his claim and notices of defects in time or not in a proper 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 only entitled to its warranty rights if he has expressly reserved these rights in writing.

- 8.2 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 from the contract or 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.
- 8.3 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 8.6 and 8.7 apply to claims for damages and reimbursement of expenses.
- 8.4 The Purchaser is entitled to statutory rights of recourse against Siegwerk as stipulated above. If the Purchaser has made any agreements exceeding the statutory warranty claims with his customers, the Purchaser's right of recourse against Siegwerk does not expand to such extension. The Purchaser has to inform Siegwerk if third party rights arise. This applies to claims for reimbursement of expenses accordingly.
- 8.5 Siegwerk shall be liable for an intended use or a specific suitability only where explicitly agreed between the Parties. For the rest, the risk of use and application lies with the Purchaser.
- 8.6 Any claims for damages or reimbursement of expenses that the Purchaser might have against Siegwerk, its legal representatives, employees and agents (together "Agents"), irrespective of their legal basis, are only valid in so far as Siegwerk or its Agents have acted wilfully or with gross negligence or if the infringed obligation is substantial for meeting the purpose of the contract.

**General Terms and Conditions of Delivery of Siegwerk Brasil Indústria de Tintas Ltda.**

Siegwerk's liability for negligent breaches of essential contractual obligations is limited to the total contract value for each supply, excluding any loss of profits or indirect damages, such as pain and suffering damages.

8.7 The exclusion or limitation of liability does not apply to bodily injury or third party damages, according to the Product and Service Liability established in the Consumer Protection Code or any other statutory regulations.

8.8 The Purchaser's rights to claim rectification of a defect, damages or reimbursement for expenses are statute barred according to the statutory provisions.

**9 Extraordinary Termination**

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

**10. Confidentiality and Advertising**

10.1 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 ("Information") received from Siegwerk or disclosed in any other way by Siegwerk or another company of Siegwerk Group, 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 section 10.1.

10.2 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.

**11. Miscellaneous**

11.1 The Purchaser may only transfer rights and obligations under the contract to third parties upon Siegwerk's prior written consent.

11.2 The Purchaser is responsible for the compliance with statutory and administrative provisions regarding the import, transport, storage and use of the goods.

11.3 Should any of these provisions be partly or totally invalid, this shall have no effect on the validity of the remaining terms.

11.4 Modifications, amendments and/or cancellation of the contract or these Delivery Terms shall be made in writing.

**12. Place of Jurisdiction and Applicable Law**

12.1 All legal relationships between the Parties shall be governed by the laws of Brazil.

12.2 The parties herein elect the court of the judicial district of São Paulo, waiving any other, however privileged it may be, as the competent to solve the disputes, except if otherwise stated on the supply order or the agreement.