



## General Terms and Conditions of Delivery of Siegwerk Philippines Inc.

### 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 Philippines Inc. ("Siegwerk"). By contracting on the basis of the Delivery Terms, the recipient of the goods/services ("Purchaser") agrees to the applicability thereof in respect of all future dealings, even if this is not explicitly stated. Any general terms and conditions of the 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 apply notwithstanding that, Siegwerk has delivered the goods, rendered services or accepted payments without reservation. As a precaution, Siegwerk hereby dissents and explicitly rejects the applicability of any general terms and conditions of Purchaser. Furthermore, the Delivery Terms supersede any and all terms of **prior** oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersede any and all terms and conditions of any order placed by Purchaser and any other terms and conditions submitted by Purchaser.
- 1.2 For avoidance of doubt, failure by Siegwerk to object to the terms and conditions set by Purchaser shall in not be construed as an acceptance of any of the terms and conditions of Purchaser. Neither Siegwerk's commencement of performance nor delivery shall be deemed as acceptance of any of Purchaser's terms and conditions. If the Delivery Terms differ from any of the terms and conditions of Purchaser, the Delivery Terms and any subsequent communication or conduct by or on behalf of Siegwerk, including, without limitation, confirmation of an order and delivery of products, constitute a counter-offer and not acceptance of such terms and conditions submitted by Purchaser. Any communication or conduct of Purchaser which confirms an agreement for the delivery of products by Siegwerk, as well as acceptance by Purchaser of any delivery of Products from Siegwerk shall constitute an unqualified acceptance by Purchaser of the Delivery terms.
- 1.3 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

- 2.1 Unless stated otherwise by Siegwerk, quotations made by Siegwerk in whatever form are not binding to Siegwerk and merely constitute an invitation to Purchaser to place an order. All quotations issued are revocable and subject to change without notice.
- 2.2 The offers made by Siegwerk are subject to confirmation. Orders are not binding until accepted and confirmed by Siegwerk in writing. A contract is only concluded upon Siegwerk's written order confirmation or by Siegwerk's execution of the order
- 2.3 Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities."
- 2.4 Each delivery shall stand as a separate transaction subject of a separate contract and any failure to deliver shall have no consequences for other deliveries

### 3. Prices

- 3.1 Siegwerk's prices are quoted ex works. Unless otherwise agreed, Siegwerk's prices do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery thereof ("Taxes").

The amount of any Taxes levied in connection with the sale of products to Purchaser shall be for Purchaser's account and shall either be added to each invoice or separately invoiced to Purchaser. If Siegwerk grants a discount, this discount only relates to the delivery specifically mentioned in the order.

- 3.2 All payments shall be made in accordance with the approved payment terms stated in the invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims except for set-offs with uncontested and/or enforceable counterclaims. Any complaint with respect to the invoice must be notified to Siegwerk in writing within 20 days after receipt of the invoice. Thereafter, Customer shall be deemed to have approved the invoice
- 3.3 Siegwerk may, without prejudice to any other rights of Siegwerk, charge interest on any overdue payment at 12% (twelve percent) per annum from the due date computed on a daily basis until all outstanding amounts are paid in full. All costs and expenses incurred with respect to the collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Purchaser's account. Every payment by Purchaser shall in the first place serve to pay the judicial and extra-judicial costs and the accrued interest and shall afterwards be deducted from the oldest outstanding claim regardless of any advice to the contrary from Purchaser.
- 3.4 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. These factors include, but are not limited to, raw and auxiliary materials, energy, products obtained from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Siegwerk shall notify Purchaser of such increase, which shall not exceed the increase in the determining cost factors. This right does not exist, if the delivery date lies within 3 months of the conclusion of the respective contract.
- 3.5 If Siegwerk raises the price according to 3.2, the Purchaser has the right to cancel the contract, at which the Parties each have to bear their own costs of the cancellation. The Purchaser is obliged to declare the cancellation 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 cancel 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.
- 4.4 Delay in delivery of any products shall not relieve Purchaser of its obligation to accept delivery thereof, unless Purchaser cannot reasonably be expected to accept such late delivery. Purchaser shall be obliged to accept the products and pay the rate specified in the contract for the quantity of products delivered by Siegwerk
- 4.5 Purchaser's wrongful non-acceptance or rejection of products or cancellation of the contract shall entitle Siegwerk to recover from

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Purchaser, in addition to any other damages caused by such action:

- (i) in the case of products which reasonably cannot be resold by Siegwerk to a third party, the price of such products as quoted in the contract; or
- (ii) in the case of products which can be resold by Siegwerk, damages equal to 50% of the price for the products as quoted in the contract as liquidated damages, unless Purchaser can show that the actual damages incurred by Siegwerk are lower than 50% of the price or were not suffered at all.

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

The place of performance/delivery as well as the transfer of risk of the goods shall be deemed defined in accordance with the Incoterms of the International Chamber of Commerce (Incoterms 2010). If no individual agreement has been reached, the term "ex works" shall apply. Title to the products shall not pass to Purchaser and full legal and beneficial ownership of the products shall remain with Siegwerk unless and until Siegwerk has received full payment for the products, including costs, interest, charges, expenses etc.

**6. Retention of Title**

- 6.1 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).
- 6.2 Where the goods are converted, connected and/or amalgamated with other goods, Siegwerk is entitled to co-ownership of these new products proportional to the invoiced value of the contractual goods delivered by Siegwerk at the time of the conversion, connection and/or amalgamation (processed goods).
- 6.3 The Purchaser may only resell the retained or processed goods in the ordinary course of business. The Purchaser shall assign herewith to Siegwerk claims against the purchasing third party in the amount of the invoice (incl. VAT). The Purchaser is entitled to collect the assigned claims until Siegwerk's revocation. The goods may only be pledged or used for chattel mortgage upon prior written consent of Siegwerk.
- 6.4 In the event that the value of the retained goods exceeds the secured receivable claims by more than 20%, Siegwerk is obliged to release securities at its sole discretion. This will be based on the net invoice value of Siegwerk's invoices to the Purchaser.
- 6.5 In the event of default of payment, impending cessation of payment, dissatisfactory disclosure of insolvency or the financial situation of the Purchaser or in the event of any foreclosure or note protest as well as in the event of opening of insolvency proceedings over the Purchaser's assets, Siegwerk is entitled to take back the retained goods without further notice.
- 6.6 The assertion of the retention of title as well as the levy of execution of the retained goods through Siegwerk shall not be qualified as cancelation of the contract in writing. Siegwerk is entitled to other ways of exploitation of the retained goods only after cancellation of the contract.
- 6.7 The Purchaser is obliged to diligently store, maintain and repair the retained goods on its own expense for Siegwerk and insure the goods against damage, loss and destruction according to the standards of a diligent tradesman. The Purchaser already assigns any potential insurance claims or other compensatory claims deriving out of damage, loss or destruction to Siegwerk who accept the cession.

**7. Force Majeure**

In the event of Force Majeure or other exceptional and unforeseeable events for which Siegwerk is not responsible (both "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, 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.

**8. Invoicing and Payment**

- 8.1 Invoices are payable net within 30 days after date of invoice.
- 8.2 Offsetting of counter-claims of all kinds is excluded, save where such counter-claim is not disputed or is finally awarded by a court of justice or it results from the same reciprocal contract as the purchase price claim.
- 8.3 If the Purchaser is in arrears with a payment, all accounts payable by the Purchaser to Siegwerk become due immediately, irrespective of the maturity.

**9. Claims for Defects and Liability**

- 9.1 The Purchaser is obliged to inspect the delivered goods promptly after receipt, if applicable by means of quick-tests; and to notify Siegwerk 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 within seven (7) days from delivery. Where the Purchaser does not submit his claim and notices of defects in time or not in a proper written form, 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.
- 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 cancel 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.
- 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 clause 9.6 apply to claims for damages and reimbursement of expenses.
- 9.4 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. This applies to claims for reimbursement of expenses accordingly.
- 9.5 Siegwerk shall be liable for an intended use or a specific suitability only where explicitly agreed between the Parties. The risk of use and application lies with the Purchaser.
- 9.6 Siegwerk's liability for any and all claims arising out of or in connection with the products and the use thereof shall per occurrence be limited to direct damages of the Purchaser and shall



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not exceed the sales value of the defective batch of the relevant product supplied to Purchaser.

Siegwerk shall under no circumstances be liable to Purchaser or any other person for any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, production failure, impairment of other goods or based on any other cause, and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.

- 9.7 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 rights, Siegwerk is entitled to terminate and withdraw from the contract with immediate effect, if 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 ("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 sole purpose of executing the respective contract. 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 clause 11.1.
- 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 transfer rights or obligations 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 Delivery Terms shall be made in writing.
- 12.5 Failure by Siegwerk to enforce at any time any provision of the Delivery Terms shall not be construed as a waiver of Siegwerk's right to act or to enforce any such term or condition and Siegwerk's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Siegwerk of any breach of Purchaser's obligations shall constitute a waiver of any other prior or subsequent breach.
- 12.6 The parties' rights and obligations shall be binding upon and inure to

the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the parties' rights and obligations, for whatever reason, shall not affect those provisions of the Delivery Terms, which are intended to remain in effect after such termination

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

- 13.1 Rights and obligations between the Parties shall be governed by the laws of the Republic of the Philippines without being affected by private international law and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.2 The parties agree that any dispute, controversy or claim arising out of or relating to these Conditions, or the breach, termination or invalidity thereof, shall finally be resolved by arbitration in accordance with the rules of the Philippine Dispute Resolution Center, Inc. (PDRCI). The appointing authority shall be PDRCI. The number of arbitrators shall be one (1) who shall be appointed in accordance with the rules of the PDRCI. The place of arbitration shall be the location of the registered office of Siegwerk and the language shall be English. The arbitral award shall be final and binding upon the parties and enforceable by any court having jurisdiction for this purpose. The parties expressly agree to waive any applicable laws and regulations which would give the right to appeal the decision or any interlocutory order of the arbitrator, so that the decision or any order of the arbitrator will not be subject to appeal to any court. The arbitral award shall be enforceable and may be used as a basis for judgment and/or execution in the Philippines or elsewhere. All costs of arbitration (including without limitation those incurred in the appointment of the arbitrator) shall, unless the arbitral award provides otherwise, be shared equally by the parties.