

## **GENERAL TERMS AND CONDITIONS**

### **1. General.**

#### 1.1 Definitions:

- Conditions (written with a capital C): the General Terms and Conditions in question;
- Supplier (written with a capital S): **Ameriscan Inc.** and to his representatives, proxy's and legal successors;
- Other Party (written with a capital O and a capital P): each natural person, legal body, partnership, limited partnership or other entity that enters into or has entered into an agreement with Supplier, or to who an offer or proposal is or has been made or extended by or on behalf of Supplier, or to who or by order of who a delivery is or has been made by or on behalf of Supplier, or by order of or for the benefit of who one or more services is or has been performed by or on behalf of Supplier.

1.2 These Conditions cover offers made, quotations produced, agreements entered into and the execution thereof, and deliveries and services performed by or on behalf of the Supplier. Departures from these Conditions will only be of force if agreed in writing by the Supplier and by the Other Party.

1.3 The application of general terms and conditions other than these Conditions is expressly forbidden, regardless of how such alternative general terms and conditions might be called and whatever form they might have, including the purchasing conditions and other general terms and conditions of the Other Party unless this has been agreed otherwise in writing.

### **2. Offers.**

2.1 Each offer or quotation made by or on behalf of the Supplier is made without obligation and does not bind the Supplier except when and for so far as the Supplier has explicitly stated otherwise in writing or when the parties might have agreed otherwise in writing.

2.2 Price lists, brochures, catalogues, folders and other information provided by or on behalf of the Supplier are prepared as carefully as possible but they nevertheless bind the Supplier only when and for so far as they have been explicitly confirmed by the Supplier in writing. The Supplier is not obliged to provide detailed information unless this has been agreed otherwise in writing.

2.3 All brochures, catalogues, price lists and folders provided in connection with an offer or quotation and all associated (technical) information provided in the form of designs, drawings or other illustrations, models, samples, tables, schedules, etc, and all other data and information provided remains explicitly the industrial and intellectual property of the Supplier. The Other Party is expressly forbidden without the Supplier's permission previously given in writing from copying any material, data or information as meant in the previous sentence either wholly or partially and/or from making it known to third parties in whatever way and/or from allowing it to be used by third parties and/or from selling it or from placing it at anybody's disposal.

2.4 Any prices specified are only valid for the quantities offered.

### **3. Realization and content of an agreement.**

3.1 An agreement between the Supplier and the Other Party is realised at the moment that the Supplier confirms in writing the acceptance of an assignment or order from the Other Party; the scope and content of the agreement follows on from the written confirmation of the Supplier.

3.2 If an offer or quotation, in the light of the provisions of Clause 2.1, is not without obligation and a binding time period for the offer has been set then the agreement is realised at the moment that the offer or quotation is accepted within the time limit by the Other Party; in such a case the confirmation of the assignment, order or binding offer is deemed to correctly and completely represent the agreement.

3.3 An agreement binds the Supplier only when it has been entered into and when the written confirmation meant in Clause 3.1 has been signed by one or more persons who are authorised to commit the Supplier in such a manner and any agreements or additions and/or changes to them or in them and agreements, promises, etc., drawn-up or made by an employee or employees of the

Supplier or by a representative, agent or other intermediary or by one or more other people who are not authorised to commit the Supplier in such a manner, whether or not these are made in writing, are not binding on the Supplier.

3.4 Any changes and/or partial cancellation or complete cancellation of an assignment or order by or on the request of the Other Party can only take place with the permission of the Supplier previously given in writing and on condition that activities already performed by the Supplier will be paid for, in full, by the Other Party; in the case of a change and/or partial cancellation requested by the Other Party, the Supplier is entitled to pass on any related (extra) costs to the Other Party and to redetermine the delivery time.

#### **4. Prices**

4.1 Except when and for so far as binding prices apply all price quotations are without obligation.

4.2 Except when otherwise explicitly notified in writing prices are:

- based on purchase prices, wage rates, wage costs, social security and government costs, transport costs, insurance premiums and other costs prevailing on the date of offer or quotation or (if no offer or quotation is made) the date of the order;
- based on ex-works delivery from the Supplier;
- exclusive of VAT, import duties and other taxes, levies and duties;
- exclusive of installation and commissioning unless otherwise explicitly stated, in which case the costs named here will be separately specified.

4.3 Unless specifically expressed otherwise prices in US Dollar (\$).

4.4 If there is an increase in one or more of the factors determining the cost price then the Supplier is entitled to increase the order price accordingly, with due observance of existing applicable legal requirements, on the understanding that any future price increases which the Supplier is aware of on the date of the order confirmation should be specified on this order confirmation.

#### **5. Risk.**

5.1 The risk with regard to the goods sold and/or delivered by or in the name of the Supplier to the Other Party is transferred to the Other Party: for goods supplied out of stock, this occurs at the moment these goods are segregated for the benefit of the Other Party; and for other goods, this occurs at the moment the goods are loaded for transportation to the Other Party or to a place indicated by the Other Party, except when and for so far as it might be otherwise agreed in writing.

5.2 Irrespective of what might otherwise be agreed with regard to the risk, any loading and unloading, transport, assembly, installation and commissioning of the goods will at all times be at the risk of the Other Party.

#### **6. Delivery and delivery time.**

6.1 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 4.2 of these Conditions, deliveries are made on a carriage paid basis to the Other Party or to another place specified timely by the Other Party. For orders or deliveries under a specified amount, the Supplier is entitled to pass on an amount covering the administrative costs to the Other Party.

6.2 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 5 about the transfer of risk, the moment of delivery is the moment that the goods are unloaded or discharged at the place where they must be delivered (the actual transfer); this also holds good if the Supplier must assemble, install and/or commission the goods.

6.3 The Other Party must report any shortages, defects and damage, in writing, directly to the Supplier within 24 hours of the delivery and if nothing is reported then the goods will be regarded as having reached the Other Party in good condition, complete and without damage.

6.4 Except when and for so far as it has otherwise been agreed in writing, the delivery times specified by or on behalf of the Supplier in an offer or quotation are not intended to have a fatal effect, which

means, amongst other things, that when a delivery is late the Other Party must explicitly notify the Supplier in writing before the Supplier can be held in default.

6.5 The Supplier is obliged to observe the specified delivery time or delivery period as much as possible, yet will never be liable if they are exceeded and when they are exceeded the Supplier is not obliged to provide any compensation for damages. Exceeding a delivery time or delivery term does not give the Other Party the right to terminate or to dissolve the agreement or to refuse to purchase goods. In cases where a delivery time or term is exceeded excessively the parties must consult with each other.

## **7. Force majeure (non-liable failing).**

7.1 If the Supplier, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of the Supplier the force majeure is of a permanent or long-lasting nature, then the parties can come to a settlement regarding the dissolution of the agreement in accordance with the rule of law and any consequences thereof.

7.2 If the Supplier, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of the Supplier the force majeure will be of a temporary or transitory nature, then the Supplier is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.

7.3 Considered as "force majeure" are each circumstance, cause or event, wherever it is occurring, appearing or arising which temporarily or permanently prevents the correct, complete and timely fulfilment of any obligation of the Supplier or makes it impossible or unreasonably problematic, and each circumstance, cause or event which the Supplier, in all fairness, cannot be expected to prevent or which wholly or partially falls outside the sphere of influence of the Supplier or on which the Supplier can exercise no influence.

7.4 The Supplier is entitled to demand payment for all activities performed by or on behalf of the Supplier in the execution of the agreement with the Other Party before the force majeure circumstance, cause or event appeared or emerged.

## **8. Guarantee/Service.**

8.1 With due observance to the provisions specified elsewhere in these Conditions the Supplier guarantees the quality of the materials used and their promised characteristics as well as the correct working of the goods provided by the Supplier. For new products this guarantee is valid for a period of twelve (12) months after delivery (including any "viewing period"), unless otherwise agreed in writing.

8.2 Faults in any goods supplied which fall under the guarantee will, exclusively at the discretion of the Supplier, be rectified or the goods will be replaced if the faults, in the opinion of the Supplier and/or manufacturer, are attributable to construction faults or faults in or any shortcomings of the materials used as a result of which the goods are unusable by the Other Party for the purpose for which they are can reasonably be thought of as intended.

8.3 Goods eligible for guarantee work must be sent carriage-paid to the Supplier. If the guarantee work is to be performed outside his own company then the Supplier is entitled to pass on the connected travel costs and expenses to the Other Party.

8.4 If, in the opinion of the Supplier, the goods tendered for rectification or repair exhibit no faults then all costs made will be passed on to the Other Party, also during the period under guarantee.

8.5 All guarantee agreements lapse if the Other Party itself makes changes and/or repairs to the product supplied or allows them to be made, or if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers) directives or the user instructions, or is being used or treated injudiciously in any other way, or if a software change has been made in or with regard to the product supplied by a party other than the Supplier, or if the product supplied has been or is being used or applied for purposes other than for which it is intended, or if the product supplied has been or is being used in a way which the Supplier in all reasonableness could not have expected.

8.6 No guarantee is provided for consumables.

8.7 Satisfying the guarantee obligation is regarded as the only and complete compensation.

## **9. Right of retention.**

9.1 If and for so long as the Other Party has not satisfied his obligations towards the Supplier then the Supplier has the right to retain all goods in his possession which have come from the Other Party or have come on behalf of the Other Party, no matter the origin or reason.

9.2 The Supplier is obliged to administer the goods meant in Clause 9.1 or to allow them to be administered in accordance with commercial practice but the Other Party has no right to press for damages or compensation in the case when the goods have completely or partially perished or been lost and/or been damaged when this is not the fault of the Supplier, and, furthermore, the risk associated with these goods remains with the Other Party.

## **10. Liability.**

10.1 Except when and in as far as something else might otherwise ensue from the provisions of imperative law concerning (product) liability, the Supplier is not obliged to compensate for damage, of whatever nature, to any movable or immovable good or to any person, including any loss of profits, at the Other party or any third party, this damage being caused directly or indirectly by or connected with any object or good supplied by or on behalf of the Supplier or being caused directly or indirectly by or being connected with any use or any application or operation of such an object or good or with the storage or keeping thereof, or with the assembly, installation or commissioning of such an object or good, and the Other Party explicitly indemnifies the Supplier against claims and demands which are based on such damage or are connected with it.

10.2 Except in the case of intentional or flagrant damage on the part of the Supplier, the Supplier is not liable for any damage as meant in Clause 10.1 which is caused by or is the result of any service performed by or on behalf of the Supplier.

10.3 With respect to any advice provided, the Supplier is only liable for normally foreseeable and avoidable shortcomings in the advice, on the understanding that this liability never exceeds the amount agreed upon and received for the advice.

10.4 Any liability on the part of the Supplier is at all times limited to directly caused damage and is at all times limited to the amount, in each case, made good by the liability insurer of the Supplier; if necessary, and at the request of the Other Party, the Supplier will provide information about the amount insured. If the Supplier has no liability insurance then any liability on the part of the Supplier is at all times limited to the net amount invoiced for the task or circumstance in question.

10.5 With respect to goods for which the Supplier has involved third parties, the applicable (contract and/or guarantee) provisions applying to the respective transaction are also valid for the Other Party if and in so as far as the Supplier wants to make use of them.

## **11. Intellectual ownership rights.**

11.1 The Other Party will employ the software (in its widest sense), peripheral equipment, technical data, wiring and/or work plans, user and/or operating instructions, drawings and all other essential documentation and other data and information supplied by or on behalf of the Supplier only for its own (internal) use and will not in any way pass it on or sell or make it available to third parties nor allow any third party to use it.

11.2 The Supplier cannot be held liable in any way with regard to the infringement of any industrial or intellectual property right or any other exclusive right which is the result of any change in or to a good sold or supplied by or on behalf of the Supplier or in the use or application of such a good which is different to that which the Supplier could have expected or assumed, or which is the result of its integration, use or application in combination with other goods not sold or supplied by or on behalf of the Supplier, or which is the result of a software amendment not made by the Supplier.

## **12. Ownership reservation.**

12.1 Without prejudice to the provisions in Clause 5. of these Conditions regarding the risk and the transfer thereof, all the goods supplied by or on behalf of the Supplier remain the property of the Supplier until the moment that the debt owed by the Other Party to the Supplier has been settled in full, this debt being the amount that the Other Party has owed the Supplier since the realisation of the agreement inclusive of all interest and costs

12.2 For so long as the ownership of the goods supplied by or on behalf of the Supplier remains, according to the provisions in Clause 12.1, with the Supplier, the Other Party is obliged to hold these goods separately from other goods in such a way that they can easily and clearly be identified as the goods of the Supplier.

12.3 At the first demand from the Supplier the Other Party must authorise the immediate return of the goods which have not yet been fully paid for where ever these may be.

### **13. Payment.**

13.1 Unless agreed otherwise payment, net cash, must be made on delivery or within thirty (30) days of the invoice date via a deposit or funds transfer into the bank or account indicated by the Supplier.

13.2 Each payment by the Other Party will be used first for the settlement of any interest due and for any collection and administration costs and, after that, for the settlement of any open claims in order of age beginning with the oldest.

13.3 If the Supplier does not receive a payment due from the Other Party on time then, beginning from the day on which the payment should have been made, the Supplier is entitled to charge the Other Party interest at a rate of one and a half (1½ %) per month, without prejudice to any further rights the Supplier has; when calculating the interest owed, months started but not completed will count as whole months.

13.4 All the legal and extra-judicial costs incurred by the Supplier including the costs incurred by the Supplier for legal aid and legal advice are to be borne by the Other Party. The extra-judicial collection costs amount to 15% of the amount to which the Other Party is indebted inclusive of any interest due, without prejudice to the right of the Supplier to claim damages from the Other Party for the actual collection costs made if these are more than the 15% specified.

### **14. Ending an agreement.**

14.1 In the case of non-observance by the Other Party the Supplier will be entitled to terminate and/or dissolve the agreement without judicial intervention and without prejudice to the right of the Supplier to claim damages, to make use of the rights resulting from ownership retention and to take other (legal) steps, and without prejudice to the right of the Supplier to demand fulfilment (with compensation) of the agreement instead of its termination.

14.2 The Supplier will terminate the agreement with the Other Party with immediate effect if:

- a. the Other Party is declared bankrupt, goes into administration, presents a request for suspension of payment, or if the Other Party (temporarily or definitely) is granted a suspension of payment or if there is a seizure of the total assets of the other Party or a part thereof;
- b. the Other Party, when this is a natural person, dies or is made a ward or if the merchandise of the Other Party is put under administration;
- c. if the Other Party, when this is a legal person, goes into liquidation or if a claim for the dissolution of the Other Party is made or a dissolution decision with respect to the Other Party has been or is taken.

### **15. Cancellation by Other Party.**

15.1 The Other Party has the right to annul the order or agreement in the following cases:

- if the Supplier after exceeding the delivery time again exceeds a new delivery time agreed by both parties without any justifiable grounds, provided that the Other Party has declared in writing before agreeing to the new term of delivery that he will refuse acceptance if the new delivery term is exceeded; and
- if the Supplier within a reasonable period of time cannot fulfil his delivery obligations and has made this known to the Other Party.

Cancellation as meant in this Clause will never result in the Other Party being compensated for any damages

## **16. Appropriate law; disputes.**

16.1 The US law is applicable to all offers, agreements, deliveries and services produced or brought out, entered into, performed or executed by or on behalf of the Supplier, with the exception of the applicability of the treaty of the United Nations concerning international trade agreements relating to movable goods (Vienna Trade Treaty).

16.2 All disputes also including those which are only considered as such by one party, resulting from or connected with an agreement to which these Conditions are applicable or the execution thereof and which cannot be solved amicably will be settled in the first instance by the District Court of the district in which the Supplier is located, with the provision that if a particular judge is imperatively appointed as competent judge then the dispute will be decided in the first instance by the judge so appointed, one way or the other without prejudice to the right of the Supplier to seizure or from taking other provisional measures at the place(s) and before the legal bodies that the Supplier wishes.

16.3 The provisions of Clause 16.2 leave intact the right of the Supplier to bring the dispute before a judge qualified according to the normal competency rules or to obtain a settlement by means of arbitration or binding advice.

## **17. Validity.**

17.1 If any provision in these Conditions is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision, recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this will have no effect on the validity of the other provisions in these Conditions. If a provision in these Conditions might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision will be automatically valid with the most far-reaching or extensive range or scope with which or within which it is valid.