

# Lexmark International Ltd General Conditions of Purchase

## Article 1: OVERVIEW

These Conditions of Purchase ("Conditions") are attached to an order ("Order") by Lexmark International Ltd, registered in England & Wales No. 2567373, whose registered office is located at Building QI, Quantum Business Park, Norden Road, Maidenhead, SL6 4AY., UK (hereinafter "LEXMARK") for goods and services ("Goods") from the supplier ("Supplier"), both of which are described in the Order.

The Order constitutes LEXMARK's acceptance of the Supplier's offer to provide the Goods at the price given in the Order, and the parties agree that these Conditions apply to and form part of the Order. These Conditions set out the entire agreement between the parties in relation to the Order, except for additional conditions expressly stated in the Order and its enclosures. Those additional conditions expressly stated in the Order prevail over any terms of these Conditions.

These Conditions prevail over any terms of the Supplier and can only be modified or supplemented with the written approval of LEXMARK. Silence or absence of response from LEXMARK shall not be considered as tacit acceptance of modifications or adjunctions proposed by the Supplier.

## ARTICLE 2: SUB-CONTRACTING

Supplier shall not, without LEXMARK's prior written agreement, subcontract the fulfilment of the Order or of any obligation relating to it. The supply of specific Goods that are necessary for the fulfilment of the Order and that are normally bought by the Supplier is not considered as sub-contracting under this Article.

## ARTICLE 3: ASSIGNMENT

Supplier shall not assign the fulfilment of the Order or any of its obligations or rights under the Order to a third party or cause a claim against LEXMARK to be owned or collected by a third party, without the written consent of LEXMARK. If Supplier assigns a claim against LEXMARK to a third party without the consent of LEXMARK in violation of this Article, such assignment shall nevertheless be valid. However, LEXMARK may at its sole discretion settle the claim with either or both of the Supplier or the third party, and such settlement will be deemed to be the final resolution of the claim.

## ARTICLE 4: PRICE

The price(s) specified in the Order: (a) are fixed prices; (b) include the provision by the Supplier of all the Goods, as well as the ancillary and associated services performed by the Supplier which are necessary for the proper performance of the Order; and (c) cover any and all costs for packaging, transportation, insurance, royalties, duties, taxes or other costs, fees or expenses of any nature.

## ARTICLE 5: PAYMENT TERMS

The payments will be made by bank transfer on a 60 days end of month basis, which means at the end of 60 days following the month of receipt of a correctly completed invoice (see Article 6 below). However, if the Goods are delivered after the invoice is received by LEXMARK, the payment terms shall be 60 days end of month from the date of delivery according to Article 11 below.

## ARTICLE 6: INVOICING

The invoices shall be addressed by the Supplier to LEXMARK's address as indicated on the Order. Correctly completed invoices must state, in particular and without limitation, the invoice date (date of creation) or alternatively the tax point, LEXMARK's Purchase Order number, the invoice number (different number for each invoice), Supplier and LEXMARK's respective corporate names and VAT numbers (where applicable), split of the gross/net/VAT amounts and VAT rates (where applicable) and the currency of invoice and exchange rate (if applicable).

## ARTICLE 7: SETOFF

LEXMARK MAY, DESPITE ANY OTHER AGREEMENT BETWEEN LEXMARK AND SUPPLIER AND TO THE EXTENT ALLOWED FOR BY LAW, SET OFF COUNTERCLAIMS IT MAY HAVE AGAINST SUPPLIER, ARISING UNDER THE ORDER OR ANY OTHER TRANSACTION.

## ARTICLE 8: SUPPLIER INSOLVENCY

If LEXMARK should become aware of or suspect the Supplier's actual or potential insolvency, LEXMARK may ask Supplier to provide evidence, within 5 working days, of Supplier's capability to fulfil its obligations under the Order. If Supplier does not provide evidence satisfactory to LEXMARK within this timeframe, LEXMARK may delay any fulfilment of LEXMARK's obligations while awaiting Supplier's situation to adjust, or may, at its sole discretion, terminate the Order without notice.

## ARTICLE 9: CONFIDENTIAL INFORMATION

The Supplier undertakes that it shall not use nor communicate to any third party any information received from LEXMARK or about LEXMARK pursuant to the Order, unless it is necessary for the proper fulfilment of the Order. This confidentiality provision shall survive the termination, expiry and/or fulfilment of the Order.

The Supplier must return, either upon LEXMARK's request, or at the termination, expiry or fulfilment of the Order, all documents, parts, items or products handed over on the basis of their commercial relations or containing information considered by LEXMARK to be confidential.

Except with LEXMARK's prior written consent, the Supplier undertakes not to transmit or communicate to any party in its country or in any foreign country, any information given by LEXMARK within the Order, as well as any lesson or experience resulting from this information (such as documents, products, know-how, etc.). The Supplier shall allow access to the information, lesson or experience only to those employees who have signed a secrecy obligation, safeguarding the adherence of the confidentiality obligation defined herein, before they gain access to the information.

The Supplier shall not disclose to LEXMARK any information which it considers confidential. Accordingly, LEXMARK shall not be obliged to consider information received from the Supplier as confidential, including, without limitation, manuals, drawings and other documents. Captions or wordings on or accompanying the Supplier's documents or goods which could contradict the principle stated in this paragraph shall not have any consequences or entail any obligation for LEXMARK.

## ARTICLE 10: INTELLECTUAL PROPERTY RIGHTS

The Supplier shall indemnify LEXMARK, to an unlimited amount, from claims made by third parties for infringement of intellectual property rights in relation to the Order, such indemnity to include all detriments suffered by LEXMARK. Supplier's conduct of such claims will be will be at Supplier's own expense, however LEXMARK may intervene, at its own expense, in any actual or potential claim.

If, in the Supplier's view, any information related to the Order, without limitation including product specifications or other documents relating to the definition of the Goods, has the potential to infringe a third party's intellectual property rights, the Supplier shall inform LEXMARK without undue delay. Otherwise the Supplier shall be liable for the infringement of proprietary rights of third parties.

The Supplier shall inform LEXMARK without delay of all proprietary rights which the Supplier has become aware of prior to the conclusion or during the performance of the Order, including the Supplier's own and third-party intellectual property rights that are at its disposal, and intellectual property rights of third parties ascertained by applying the diligence usual in the trade, which could impede or influence the ownership, use or disposition of the Goods by LEXMARK.

If the infringement of intellectual property rights is asserted by a third party and an impairment or prohibition of the contractual use of the contractual items results therefrom, the Supplier shall either (a) modify or substitute the Goods in such a manner that they are no longer subject to the intellectual property rights, but nevertheless in compliance with the Order; or (b) procure a right of use in such a manner that a contractual use is made possible for LEXMARK free of charge. If the Supplier does not do (a) or (b), LEXMARK may terminate the Order and/or demand damages instead of performance.

This Article shall continue to apply after the termination or expiration of the Order.

## ARTICLES 11: DELIVERY

**11.1: Packaging / Transportation / Terms of Delivery:** Goods must be packaged according to the type of product and means of transportation. Packaging must reflect the instructions on the front page of the Order, if any, and shall comply with local and international regulations for transport and transit. Packages must bear the Order number and show quantity or gross and net weights. Prepaid transportation charges must be supported by a paid freight bill or equivalent.

The delivery terms shall be DDP, Named Place of Destination (Delivery Duty Paid, Incoterms 2010). Transfer of risk shall occur in accordance with DDP Incoterms ICC 2010.

**11.2: Place of Delivery:** Absent any written agreement stating otherwise, the delivery of the Goods shall take place at the destination designated by LEXMARK (even if the Goods are invoiced "port of departure"), between 8:30 am and 12:00 am or between 13:30 pm to 17:00pm during weekdays, except holidays. No Goods will be received outside these times.

**11.3: Quantity:** Only the weight and quantity acknowledged by LEXMARK will be taken into consideration and be decisive for the payment of invoices. Any expenses resulting from omissions or errors on the delivery form shall be exclusively borne by the Supplier.

**11.4: Time of Delivery:** The delivery date specified by LEXMARK shall be binding and shall mean the date at which the Goods must be delivered. If the Supplier does not meet the delivery date (time being of the essence), LEXMARK reserves the right to cancel the Order and shall then be entitled to make its purchase from another supplier of its choice, and to claim from the Supplier compensation for any damage/loss suffered as result of the delay in performance.

## ARTICLE 12: QUALITY, LIABILITY FOR DEFECTS

The Supplier shall be liable for all defects in the Goods which are identified during the periods prescribed by statute (but no less than 12 months), commencing on the date of transfer of risk or, if acceptance has been provided for, upon acceptance by Lexmark, and during this period the Supplier guarantees the contractual and defect-free condition and defect free functioning of the Goods. This warranty period shall be extended by the time the Goods cannot be used correctly.

The Supplier warrants that the Goods comply with the legal requirements, safety rules and industry standards applicable at the time of delivery (in particular, but not limited to: WEEE, ROHS, battery ordinance, packaging ordinance, CE label as per EU Directive 1999/5/EC).

If the delivered goods are defective or if they do not comply with the specifications, LEXMARK may, at its discretion and subject to statutory provisions more favourable to LEXMARK, either: (a) return the defective goods to the Supplier, at the latter's risk and expense, and require the Supplier to deliver substitute goods that are defect free and in compliance with the applicable specifications and requirements; (b) require a reduction of the purchase price; or (c) terminate immediately, fully or partly, the Order, and claim reimbursement of the purchase price and indemnification from the Supplier for any damage/loss.

Payment of invoices does not imply acceptance of the quality of the delivered Goods and does not imply any waiver by LEXMARK of any of its right to any legal action in the event that the Goods are defective, non-compliant or of insufficient quality.

Any assistance which may be provided by LEXMARK to the Supplier for the fulfilment of the Order as well as any controls which LEXMARK reserves the right to make during production of the Goods shall not imply approval of the Supplier's methods or acceptance of the quality of the Goods.

If the Supplier participated in the definition of the specifications of the Goods covered by the Order, LEXMARK's agreement with the specifications shall not, except in the event of an explicit agreement to the contrary, either cancel or limit the Supplier's obligation to deliver Goods that comply with the Order (including the specifications), are non-counterfeiting, and respond to the needs that LEXMARK has exposed to the Supplier.

## ARTICLE 13: TRANSFER OF TITLE, ACCEPTANCE, INSPECTION FOR DEFECTS

The supply of goods which are to be produced or manufactured and installed services is subject to written acceptance by LEXMARK, in which case title will transfer to Lexmark upon acceptance. In all other cases, the transfer of title shall occur upon delivery of the goods to Lexmark's premises.

Upon delivery, Lexmark shall inspect only for obvious defects. In all other respects LEXMARK is, to the maximum extent permitted by law, released from statutory or contractual obligations to inspect and object to defects.

## ARTICLE 14: TAXES

Absent any written agreement to the contrary, no action may be taken against LEXMARK for the payment of duties or taxes incumbent upon the Supplier as a consequence of the Order.

## ARTICLE 15: LEXMARK OWNED MATERIAL

All tools, equipment, material and documentation (or replacements or attachments thereto) provided or paid for by LEXMARK shall remain LEXMARK's property and shall only be used by Supplier for work performed for LEXMARK. Such property held by Supplier: (a) shall be held at Supplier's risk (with Supplier responsible for insuring against loss or damage); (b) may be removed by LEXMARK at any time; and (c) must be maintained and repaired by Supplier at Supplier's expense.

## ARTICLE 16: LIABILITY AND INSURANCE

Absent any agreement to the contrary, and in any event without any effect on the date of transfer of ownership, Supplier remains fully liable for the Goods until delivery to LEXMARK or to any other person empowered by LEXMARK; similarly, the Supplier shall be liable for any loss or damage which it causes to LEXMARK's property or employees during the performance of its duties.

Supplier shall at its expense indemnify, hold harmless and (at LEXMARK's request) defend LEXMARK and its subsidiaries, and its and their officers, employees, affiliates and customers against any and all claims arising from or relating to Supplier's action or inactions under the Order. Supplier shall for the entire term of the agreement, including the applicable warranty period, maintain a third party liability insurance policy providing for terms and conditions customary in the industry (minimum liability limit: USD 2 million per loss event) for property damage, public liability, employer's liability, and other applicable comprehensive insurance which is adequate in amount and scope of coverage to protect LEXMARK against any claims under applicable worker's compensation or other like laws. Such insurance shall be primary insurance and shall not limit Supplier's liability under the Order or otherwise. Supplier shall furnish proof of appropriate insurance coverage at LEXMARK's request. Any lower liability limits shall be subject to LEXMARK's consent.

## ARTICLE 17: COUNTRY OF ORIGIN

The Supplier must state country or countries of origin for the delivered Goods on the invoice and delivery form. The Supplier shall compensate LEXMARK for all expenses and damages incurred by LEXMARK as a result of false or inaccurate declarations about the countries of origin for the Goods.

## ARTICLE 18: CANCELLATION

The Order may be terminated at any time upon written notice by LEXMARK to Supplier. Upon receipt of such notice, Supplier shall stop work immediately and terminate all orders and subcontracts to the extent that they relate to the terminated Order. There shall be no charges for terminating the Order. LEXMARK's sole responsibility to Supplier upon such termination shall be to pay the price for such Goods as have been delivered as of the time of termination and, if applicable, only to the extent that such Goods have been accepted by LEXMARK. In no event shall LEXMARK be liable to Supplier for cost of material, labor, loss of any anticipated profit, or any indirect or consequential damages whatsoever.

## ARTICLE 19: PUBLICITY

Without any prior written agreement by LEXMARK, the Supplier shall not advertise in any way the fact that it has furnished or has undertaken to furnish the Goods LEXMARK, nor in a general manner its business relations with LEXMARK. This Article shall apply for three (3) years after the expiration, termination or fulfillment of the Order.

## ARTICLE 20: GIFTS

In order to preserve an indisputable impartiality and honesty of the relations between LEXMARK and its suppliers, no gifts nor gratuities shall be given in any form whatsoever to any LEXMARK or Supplier employees or members of their families. Gifts include personal or family invitations, personal services, favours, discounts and other preferential treatment of any sort.

## ARTICLE 21: COMPLIANCE WITH LAW

The Supplier shall comply with all applicable laws, regulations, and rules of competent government authorities (including, but not limited to, data protection law and other privacy laws, export control laws and export licensing requirements, safety laws and employment laws) relating to the performance of all obligations arising out of the Order.

## ARTICLE 22: APPLICABLE LEGISLATION

These General Conditions of Purchase, as well as any contractual relationship between the parties, are governed by United Kingdom law. The UN Convention on Contracts for the International Sales of Goods dated April 11, 1980 shall not apply.

## ARTICLE 22: COMPETENCE

The Laws of England and Wales govern this Agreement and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Order.