

General Conditions of Purchase Lexmark International SA (Pty) Ltd

Article 1: OVERVIEW

The following General Conditions of Purchase shall (hereinafter "General Conditions") apply to all orders by Lexmark International SA (Pty) Ltd, whose registered office is located at The Design Quarter District, Block B – Cnr William Nicole Drive & Leslie Ave East – Fourways GP, 2191- South Africa (hereinafter "LEXMARK") except for any additional conditions expressly stated in LEXMARK's Purchase Order and its enclosures (hereinafter the "Order"). The General Conditions form an inseparable part of the Order and together form an agreement, which LEXMARK concludes with Supplier (hereinafter the "Agreement"). The General Conditions prevail over any terms and conditions of Supplier.

The Order is LEXMARK'S offer to Supplier to purchase the goods and services described herein; acceptance of this Order from Supplier shall take place upon Supplier's reception of the Order unless the Supplier expressly without delay notifies LEXMARK otherwise.

The term "Goods" shall be intended to refer to both "goods" and "services" and, accordingly, "delivery" shall be intended to refer to delivery of Goods as well as to the provision of services. The term "working day" means any day other than a Saturday, Sunday or a day on which the banks are not open for business in the country where the Goods are to be supplied.

If any provision of the Agreement should be held invalid or impracticable or unenforceable, the validity of the remaining provisions shall not be affected. Any invalid or impracticable or unenforceable provision shall be replaced by such valid and practical provision as most closely reflects the economic intent and purpose of the original provision.

Any modifications or amendments hereto and from the terms stated in the Order shall be in written form to be valid and confirmed in writing by LEXMARK.

Silence or absence of response from LEXMARK can by no means be considered as tacit acceptance of modifications or adjunctions proposed by the Supplier.

ARTICLE 2: SUB-CONTRACTING

Supplier cannot, without LEXMARK'S prior written agreement, subcontract the fulfillment of the Agreement or any part thereof or of any obligation relating thereto.

The supply of specific services and/or components and materials that are necessary for the fulfillment of the Order that are normally bought by the Supplier, shall not be considered as sub-contracting as per this article.

ARTICLE 3: ASSIGNMENT

Supplier shall not assign the fulfillment of the Agreement and/or any claims against LEXMARK to any third parties or cause any claims against LEXMARK to be collected by any third parties without the prior written consent of LEXMARK.

If Supplier should assign any claims against LEXMARK to a third party without the prior written consent of LEXMARK in breach of this provision, such assignment shall nevertheless be valid. However, LEXMARK may in its sole discretion render performance to Supplier or the third party in full satisfaction of its obligations under this Agreement.

ARTICLE 4: PRICE

Prices specified in the Agreement shall be fixed prices. The price shall include all the work and services performed by the Supplier which is necessary for the proper performance of the Agreement. In particular, the price covers any and all costs for packaging, transportation, insurance, expenses, royalties, duties, taxes or other fees 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 that at the end of two complete months (60 days) following the month of receipt of a valid invoice (as per Article 6 "Invoicing" below).

However, if the Goods are delivered after the invoice is received by LEXMARK, the payment shall be made 60 days after the month end from the date of delivery according to article 11 below "Delivery" of the Goods.

ARTICLE 6: INVOICING

The Supplier shall provide LEXMARK with an original tax invoice in respect of each Agreement.

The invoices will be addressed by the Supplier to LEXMARK'S address as indicated on the Agreement form. Only valid tax invoices will be accepted by LEXMARK.

Invoices must state, in particular and without limitation, the invoice date (date of creation) or alternatively the tax point, LEXMARK'S 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).

Only invoices containing the above information as well as the country of origin of the Goods, as contemplated in article 20 will be regarded as valid.

ARTICLE 7: SETOFF

LEXMARK MAY, TO THE EXCLUSION OF SUPPLIER AND TO THE EXTENT PROVIDED FOR BY LAW, SETOFF COUNTERCLAIMS IT MAY HAVE AGAINST SUPPLIER, ARISING UNDER THIS OR ANY OTHER TRANSACTION OR ORDER.

ARTICLE 8: SUPPLIER'S INSOLVENCY

If LEXMARK should become aware that Supplier may be insolvent; LEXMARK may, in its sole discretion, elect to request Supplier to give evidence, within 5 working days, of Supplier's capability to fulfill its obligations. If Supplier does not provide such evidence within the said time, LEXMARK may delay any fulfillment of LEXMARK obligations while awaiting Supplier's response to adjust, or may, at its sole discretion, terminate this Agreement without further 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 on the basis of one of its Orders, unless it is necessary for the proper fulfillment of the Agreement. This secrecy provision shall apply after termination of the Agreement, as well as after its fulfillment.

The Supplier undertakes to return, either upon LEXMARK'S first request, or at the termination of this Agreement, all documents, parts, items or products handed over on the basis of their commercial relations or containing information considered by LEXMARK as confidential.

Except with LEXMARK'S prior written consent, the Supplier shall not to transmit or communicate to any party in its country or in any foreign country, any information given by LEXMARK within one of its Orders, as well as any less or experience resulting from this information (such as documents, products, know-how, etc.). The Supplier shall allow access to the confidential information 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.

Unless expressly stated otherwise, LEXMARK shall not 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 assume sole unlimited liability, towards third parties for infringement of any of LEXMARK'S intellectual property rights LEXMARK. In particular, the Supplier shall conduct any litigation arising from any claim, demand or action brought and all negotiations for settlement with third parties by agreement with LEXMARK, as well as legal disputes, at its own expense.

LEXMARK

If standards of LEXMARK in the Agreement form, in a product specification or other documents relating to the definition of the Goods results in the infringement of intellectual property rights, the Supplier shall inform LEXMARK without undue delay.

The Supplier shall inform LEXMARK without delay after becoming aware thereof, of the infringement of any intellectual property rights which the Supplier has become aware of prior to the conclusion or during the performance of the Agreement, including the Supplier's own and third-party industrial property rights 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 operation of the Goods for LEXMARK.

If the infringement of the intellectual property rights is asserted by a third party and an impairment or prohibition of the contractual use of Goods results therefrom, the Supplier shall modify or substitute the Goods in such a manner that they are no longer subject to the disputed intellectual property rights, but comply with the contractual provisions, or to effect the right of use in such manner that a contractual use is made possible for LEXMARK free of charge. If this is not possible, LEXMARK may rescind this Agreement or claim damages instead of demanding specific performance.

LEXMARK may intervene, at its own expense, in any possible conflict. The provisions of this article shall continue to apply after the termination or expiration of the Agreement

ARTICLES 11: DELIVERY

11.1: PACKAGING / TRANSPORTATION / TERMS OF DELIVERY

Goods must be packaged according to the type of Goods and means of transportation. Packaging shall reflect 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 LEXMARK'S 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, Incoterm ICC 2010).

11.2: PLACE OF DELIVERY

Supplier shall deliver the Goods on such dates and at such times as set out in an Agreement and to or at the destination designated therein by LEXMARK (even if the Goods are invoiced "port of departure"), between 8.00 am and 12.00 am and between 13.30 pm to 16.00 pm during working days, except Saturdays. 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 valid 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 in the Agreement shall be binding and shall mean the date by which the Goods must be delivered.

Time is of the essence of every Agreement and delivery thereof.

If the Supplier is in default, LEXMARK reserves the right to cancel the Agreement or part thereof 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 the performance.

11.5: QUALITY, LIABILITY FOR DEFECTS

The Supplier shall be liable for defects for any applicable statutory period (but in any event for not less than 12 months), commencing on the date of transfer of risk or, if acceptance has been provided for, upon acceptance by LEXMARK, and guaranteeing the contractual and defect-free condition and defect free functioning of the Goods for which the Supplier is responsible. The period of liability is extended by the time the Goods cannot be used correctly.

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

If the delivered Goods are defective or if they do not comply with the specifications, LEXMARK may reject or revoke acceptance of such Goods and shall be, entitled to:

(i) return to the Supplier, at the Supplier's risk and expense, the non-conforming or defective Goods, or (ii) return the defective products to the Supplier for repair or replacement (at the Supplier's risk of loss and expense of unpacking, examining, re-packing, and reshipping); or ;

(iii) retain such defective at a reduced purchase price, or to

(iv) terminate immediately, fully or partly, the Agreement in question.

LEXMARK may in all of the instances above hold the Supplier liable for such damages as LEXMARK may have suffered. The Supplier shall be liable for any special, consequential and incidental damages of LEXMARK. These remedies are in addition to any other remedies provided hereunder, at law.

Payment of invoices do not imply acceptance of the quality of the delivered Goods and do not imply any waiver by LEXMARK of its right to any legal action if the Goods turn out to be defective.

Any assistance which may be provided by LEXMARK to the Supplier for the fulfillment of the Supplier's obligation in terms of an Agreement as well as any controls which LEXMARK reserves the right to make during production may not be considered as implying approval of the Supplier's methods or acceptance of the quality of its Goods.

If the Supplier participated in the definition of the specifications of the Goods covered by the Agreement, LEXMARK'S statement of these specifications may not, except in the event of an explicit written agreement to the contrary, either cancel or limit the Supplier's obligation to deliver the Goods complying with the terms of the Agreement, non-counterfeiting and responding to the needs LEXMARK has exposed to the Supplier.

11.6: TRANSFER OF RISK

Transfer of risk shall occur in accordance with DDP Incoterms ICC 2010.

11.7 TRANSFER OF TITLE, ACCEPTANCE, INSPECTION FOR DEFECTS

The supply of Goods which are to be produced or manufactured and installed services shall require a written acceptance by LEXMARK. The transfer of title occurs upon delivery of the Goods to LEXMARK the destination. Upon delivery, LEXMARK shall inspect only for obvious defects. In all other respects LEXMARK is released from statutory or contractual obligations to inspect and object to defects.

ARTICLE 12: TAXES

In the absence of any agreement to the contrary, no action may be taken against LEXMARK for the payment of duties and miscellaneous taxes incumbent upon Supplier according to any legislation in force.

ARTICLE 13: LEXMARK OWNED MATERIAL

Any tools, equipment, material or replacement or attachments thereto and/or documentation 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 the Supplier:

(i) shall be held at Supplier's risk (with Supplier responsible for insuring against loss or damage),

(ii) may be removed by LEXMARK at any time, and

(iii) must be maintained and repaired by Supplier at Supplier's expense.

ARTICLE 14: LIABILITY AND INSURANCE

In the absence of any agreement to the contrary, and in any event without any effect on the date of transfer of ownership, the Supplier shall remain 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 during the performance of any of the duties derived from an Agreement to LEXMARK'S movable and immovable property and to LEXMARK'S employees.

The Supplier shall at its expense indemnify, hold harmless and (at LEXMARK'S request) defend LEXMARK its subsidiaries, and their officers, employees, affiliates and customers against any and all claims arising from or relating to the Supplier's acts or omissions. The Supplier shall for the entire term of the Agreement, including the applicable guarantee and warranty periods, 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) a Property damage, a Public Liability, an Employer's Liability and other applicable comprehensive insurance which is adequate in amount and scope of coverage to protect LEXMARK hereunder and against any claims under applicable worker's compensation or other laws. Such insurance shall be primary insurance and shall not limit the Supplier's liability under this Agreement or otherwise. The Supplier shall furnish proof of appropriate insurance coverage at LEXMARK'S request. Any lower liability limits shall be subject to LEXMARK'S express prior written consent.

ARTICLE 15: COUNTRY OF ORIGIN

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

ARTICLE 16: CANCELLATION

Any Order and Agreement 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 work. There shall be no charges for terminating the Order and Agreement. 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 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, labour and for loss of any anticipated profit.

ARTICLE 17: PUBLICITY

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

ARTICLE 18 : GIFTS

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

ARTICLE 19 : 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 Agreement.

ARTICLE 20: APPLICABLE LEGISLATION

These General Conditions shall be governed by the laws of the Republic of South Africa. The UN Convention on Contracts for the International Sales of Goods dated April 11, 1980 shall not apply.

ARTICLE 21: COMPETENCE

ANY DISPUTE ARISING WITH RESPECT TO OR IN CONNECTION WITH THE INTERPRETATION OR PERFORMANCE OF THE PROVISIONS OF THIS ORDER SHALL BE BROUGHT BEFORE THE HIGH COURT OF SOUTH AFRICA HAVING JURISDICTION.

The Parties agree that any costs awarded will be recoverable in accordance with the High Court tariff, determined on an attorney-and-own-client scale.