



## GENERAL TERMS AND CONDITIONS OF PURCHASING, APPLIED BY FLECTION INTERNATIONAL B.V.

### 1. Definitions

1.1 In these General Terms and Conditions ("**General Terms and Conditions**"), the following definitions apply:

- a) **Flection**: Flection International B.V., established at Culemborg, the Netherlands as well as its legal heirs and successors under universal or exceptional title and all the companies and/or enterprises allied with it or with those legal heirs and successors;
- b) **Supplier**: each and every natural person or legal entity with whom or with which Flection enters into an Agreement or with whom or with which Flection conducts negotiations concerning entering into and concluding an Agreement in connection with Products;
- c) **Agreement**: each and every agreement which is concluded between Flection and a Supplier, and each and every amendment or supplement thereunto, as well as all (lawful) actions conducted with a view to performing that agreement and, seen in retrospect, all (lawful) actions required for entering into that agreement, which is intended in whole or in part for the sale and supply of Products on the part of the Supplier to Flection;
- d) **Products**: all goods which are the subject of an Agreement, including, but not limited to, ICT materials and computer equipment in the broadest senses of the words, PCs, notebooks, monitors, servers, printers and peripheral equipment and/or separate components of those goods;
- e) **Refurbishment**: the process of removing data, repairing, replacing, packaging and/or destroying (parts of) Products with a view to selling those goods to third parties.

### 2. Applicability

2.1 The General Terms and Conditions shall apply to all Agreements and shall also apply to all (other) acts and lawful acts conducted by Flection and the Supplier.

2.2 Should one or more clauses of the Agreement be null and void or rendered null and void, the remainder of the Agreement shall remain in force. Parties shall confer with one another on those clauses which are null and void or which are deemed not to be lawful with a view to agreeing to a replacement clause or stipulation in which the scope and spirit of the null and void clause or the stipulations deemed to be inapplicable shall be respected and honoured.

2.3 The applicability of any general or specific terms and conditions or stipulations imposed by the Supplier is expressly rejected by Flection.

### 3. Offers or tenders made and entering into and concluding Agreements

3.1 When required, Flection shall issue an offer or tender to the Supplier in connection with a request made to this end, which request shall be referred to as a "Request for a Proposal (RFP)".

3.2 An offer issued by Flection and the prices and further terms and conditions made therein as well as any other kinds of offers contained therein shall not bind Flection and remain non-obligatory and revocable, unless Flection shall have determined otherwise in writing in that offer it shall have issued.

3.3 An Agreement shall be deemed to have been concluded if and to the extent the offer made by Flection shall have been accepted by the Supplier in writing. This stipulation may solely be invoked by and in favour of Flection.

3.4 However, should the Supplier provide an offer to Flection or make an offer in some other manner, an Agreement shall solely be deemed to have been concluded if and to the extent that Flection shall have accepted that offer in writing.

### 4. Amendments and supplements

4.1 Amendments and supplements to any stipulation in an Agreement shall solely be effective if agreed in writing.

4.2 When an amendment or supplement as referred to in 4.1 shall have been agreed that amendment or supplement shall solely apply to the Agreement in question, unless expressly otherwise agreed.

4.3 The General Terms and Conditions may be amended solely by means of a notice being issued to that effect by Flection to the Supplier. In default of any protest being made within thirty (30) days after the date of the aforementioned notice, the amended Terms and Conditions shall be applicable from the date of the notice in question to all new Agreements as well as to all still currently valid Agreements, to the extent the latter shall be performed after the date of the aforementioned notice.

### 5. Supply, risk and transfer of ownership

5.1 The supply of the Products shall be made at the venue opted for by Flection at Pascalweg 13 at (4104 BE) Culemborg, the Netherlands on the time agreed and within the agreed upon time period, or at any other location to be designated by Flection and/or at any other time to be designated by Flection upon the Agreement having been concluded containing the valid condition "Incoterm DDP (Delivery Duty Paid)".

5.2 If a delivery period shall have been agreed, it shall commence from the moment at which the offer made shall have been accepted in writing by the Supplier or by Flection, unless otherwise agreed.

5.3 The transport and packaging of the Products shall be made for the risk and account of the Supplier. If and to the extent payments are due, despite this, from Flection to third parties the costs thus incurred shall be reimbursed to Flection upon the first request being made to this effect by Flection to the Supplier or alternatively be deducted from the purchase price to be paid by Flection as determined in compliance with Article 7.

5.4 Flection shall retain the right to request the Supplier to delay the delivery of the Products. The Supplier shall, in that case, store the Products, clearly packed and clearly marked as being intended to Flection, and, shall also secure and insure those stored Products.

5.5 Only upon delivery being made at the venue referred to in Article 5.1, at the agreed upon time, shall the risk of and the ownership of the Products be transferred to Flection, unless otherwise agreed.

5.6 The supply of the Products shall not be deemed to be equated with acceptance thereof. Any inspection of the Products by Flection shall similarly be tantamount to neither supply nor acceptance having been made of the Products.

### 6. Packaging, shipment and auxiliaries

6.1 The Supplier shall be bound to package the Products properly and also do so in compliance with the valid legal rules and regulations and also do so in accordance with the demands made known to the Supplier by Flection.

6.2 The Supplier shall be bound to place a packaging docket with the Product which shall be required to contain, among other things, the name and address of the Supplier, the exact contents of the shipment, the weight and dimensions of the Products, the delivery address and other details relevant to and for the delivery. The Supplier shall also be required to include on the packaging docket a reference as to whether the Products have been packaged using borrowed packaging material(s).

6.3 The Supplier shall be bound to take back packaging material and other materials used for the transport of the Products upon supply having been made, to the extent those materials do not belong to Flection or are not part and parcel of the Products themselves. Flection shall retain the right, at any and all times, to return the packaging materials to the Supplier, for the account and at the risk of the Supplier.

6.4 The (packaging) materials, drawings, models, instructions, specifications, other auxiliaries and further and other sorts of goods provided by Flection in the frame of reference of the delivery shall remain the property of Flection and shall be required to be returned to Flection as soon as possible, after the Products shall have been delivered, to Flection. The Supplier shall be bound to designate auxiliaries as the property of Flection and maintain them in good condition.

6.5 Flection shall retain the right to refuse a shipment if the Supplier fails to meet the aforementioned obligations in connection with the packaging and shipment of the Products, without prejudice to any and all of its other and further rights.

## 7. Prices and reports

### General

7.1 The price of the Products shall be determined on the basis of the "Fixed Price principle" or on the basis of the "Revenue Shared Purchase Price principle", unless otherwise agreed.

7.2 In connection with the Products a descriptive report shall firstly be drawn up which shall contain the technical specifications given ("the **Inventory Report**").

7.3 All Products shall thereafter be the subject of a trial/check to be conducted by Flection. The results and findings of that trial shall be processed into a status report which shall contain – among other things – a description of the cosmetic and technical condition of the Products ("the **Status Report**"). The Status Report shall be a detailed, further detailed continuation of that contained by the Inventory Report. The Status Report shall verify, among other things, the data contained by the Inventory Report.

7.4 Aside from when another arrangement shall have been made, the Status Report shall, in principle, be drawn up within two (2) months after the Products shall have been supplied, in compliance with that determined in Article 5. The aforementioned time period shall solely be a target time period, exceeding which shall not grant the Supplier the right to dissolve the Agreement. The Status Report shall be binding in all cases for the Supplier and the latter shall be required to comply with the results and findings contained by it. The ultimate price to be paid for the Products shall be included in a new report called the "**Sales Report**". The Sales Report shall be a continuation of the Status Report.

7.5 All prices referred to in this Article 7 are expressed in Euros and are exclusive of Value Added Tax.

### Fixed Price

7.6 The agreed upon, conditional purchase price for the Products shall be non-obligatory and shall solely serve as a point of departure ("the **Basic Purchase Price**"). The Basic Purchase Price shall, in principle, be determined using the (technical) specifications provided in advance by the Supplier and the delivery time period to be used for the Products.

7.7 The Basic Purchase Price shall be subject to corrections being applied to it on the grounds of the findings as contained in the Status Report.

7.8 Flection shall be due to pay the Supplier an amount which shall be calculated after the Status Report shall have been drawn up (the "**Final Purchase Price**"). The Final Purchase Price is the Basic Purchase Price which shall have been corrected on the grounds of the most recent "Missing Wrong Damage table" drawn up by Flection ("the **MWD table**") applicable at the time at which the Status Report shall be drawn up, in which connection use shall be made of the findings contained by the Status Report, and which shall be subject to the deduction of any costs incurred by Flection but which are to be for the account of the Supplier in accordance with this Agreement. Flection shall retain the right to make amendments to the MWD table.

7.9 Flection shall solely be due to pay the Final Purchase Price. The result of the calculation to be made on the grounds of Article 7.8 may mean that Flection is not due to pay any purchase price and that the Final Purchase Price is zero. The Final Purchase Price shall in any case never exceed the Basic Purchase Price.

7.10 After determining the Final Purchase Price, Flection shall notify the Supplier of the Final Purchase Price by sending the Supplier the Sales Report.

### Revenue Shared Purchase Price

7.11 The purchase price for the Products shall be determined after Refurbishment and after the Products shall have been sold (on) by Flection to third parties, this being done on the grounds of the Sales Revenue, as defined below in Article 7.12 and the Revenue Share percentage to be applied, in compliance with Articles 7.12-7.17. If no sales are made of the Products, the purchase price shall be determined in compliance with Article 7.18.

7.12 The revenue generated by the sales of the Products shall be purchase price paid by third parties less the costs incurred by Flection in connection with the Products, including, but not limited to, amendments made and supplements for the Products ("the **Sales Revenue**"). Being bound to sell (on) the Products is solely an obligation to do everything it can on the part of Flection.

7.13 Flection shall determine the percentage on the basis of the purchase price due from Flection ("the **Revenue Share percentage**").

7.14 The application of the Revenue Share percentage determined on the Sales Revenue results in the purchase price due from Flection ("the **Revenue Shared Purchase Price**") and the (remaining) amount which is due to it.

7.15 Flection shall solely be due to pay the Revenue Shared Purchase Price. The result of the calculation to be made on the grounds of Articles 7.12-7.14 may lead to a situation prevailing in which Flection is not due to pay any purchase price and the Revenue Shared Purchase Price amounting to zero.

7.16 After determining the Revenue Shared Purchase Price, Flection shall notify the Supplier of this by sending the Supplier the Sales Report.

7.17 Parties may agree on a minimum purchase price based on the expected sales revenue and base on the (technical) specifications made known in advance by the Supplier, and, the supply/delivery time period for the Products ("the **Minimum Purchase Price**"). The Minimum Purchase Price may be made subject to corrections on the grounds of the findings contained by the Status Report in compliance with Articles 7.8 and 7.9.

7.18 If and to the extent the Products, after Refurbishment, are not sold by Flection within two (2) months after having been supplied in compliance with that determined in Article 5, to third parties, Flection shall solely be due to pay:

- a) a reasonable purchase price which shall be determined by Flection using, among other things, the MDW table as well as the findings contained by the Status Report ("Fair Market Value"), or
- b) the Minimum Purchase Price, if this shall have been agreed.

## 8. Invoicing and payment

8.1 The Supplier shall invoice Flection the purchase price indicated by Flection. Invoices shall solely be submitted after the purchase price which is due shall have been determined in compliance with Article 7. The invoice shall be required to be sent to Flection International B.V., Pascalweg 13, 4104 BE, Culemborg, the Netherlands and shall also be required to refer, among other things, to the assignment number and given a description of the Products.

8.2 Payment of the purchase price due shall, in principle, take place within thirty (30) days after the Sales Report shall have been sent, or, if later, after submission of the invoice shall have been made by the Supplier.

8.3 Payment shall not be equated with distancing oneself from any rights.

8.4 Flection shall be entitled to postpone payment if there is any shortcoming on the part of the Supplier as well as in the light of off-setting any amounts due to the Supplier against receivables due from the Supplier.

## 9. Guarantees and further obligations imposed on the Supplier

9.1 The Supplier guarantees that the Products are its property and are free of any charges and encumbrances, including any encumbrances arising out of patents, mark rights, copyrights and other (intellectual and/or industrial) (property) rights. The Supplier shall indemnify Flection in connection with, against and from any and all claims made in that connection by third parties.

9.2 The Supplier guarantees that the Products meet all the relevant stipulations of the law concerning, among other things, quality, the environment, safety and health.

9.3 The Supplier may not transfer any rights and obligations arising out of this Agreement and these General Terms and Conditions to third parties without written permission granted to this end by Flection. Flection may make its consent conditional.

9.4 Without prejudice to the right retained by Flection to demand full performance of termination of the Agreement and/or (further) compensation for damage, the Supplier shall be due, for each and every shortcoming in its performance of its obligations, to pay Flection a directly due fine of € 5.000.00.

## 10. Force majeure

10.1 Parties shall inform one another as soon as possible of any (possible) situation of force majeure which might arise.

10.2 If force majeure applies on the part of the Supplier, the Supplier shall solely be entitled to refrain from paying compensation for damage and/or fines or penalties, and should the Supplier not be in default, if the Supplier shall have notified Flection, in writing, without delay after the force majeure in question shall have come about.

10.3 Circumstances which shall not be deemed to be force majeure on the part of the Supplier shall include: strikes and exclusions, stagnation and other problems in performing its obligations as a Supplier on its own part or on the part of its own suppliers and/or with third party transporters and/or measures imposed by any government body, the lack of any permit required to be issued by government as well as failure to perform on the part of third parties deployed by the Supplier.

**11. Liability and indemnification**

- 11.1 Contractual and lawful liability on the part of the Supplier is not limited. The Supplier shall be required to be sufficiently insured in connection with its liability in respect of Flection.
- 11.2 Aside from in the case of gross negligence or deliberate action on the part of management at Flection, the Supplier shall indemnify Flection from and against and in connection with any and all claims may by third parties, of whatever kind, made in connection with compensation for damage, in connection with the Product, or, following or consequential to the use of the Products.
- 11.3 Aside from deliberate actions or gross negligence on the part of the management of Flection, Flection shall never be liable for damage sustained by the Supplier or by third parties – but not limited to consequential damage, intangible damage, business interruption or environmental damage.
- 11.4 Aside from deliberate actions or gross negligence on the part of Flection and without prejudice to that determined in the following section, the total liability of Flection in respect of the Supplier, contractually or not, shall in any case be limited to the lowest of, or, the amount that Flection may claim from its insurers, or, the contractual sum on question.

**12. Dissolution and suspension**

- 12.1 If the Supplier fails to meet any of its obligations properly and in full or fails to meet any of its obligations in a timely manner, arising out of the Agreement, the Supplier shall be deemed to be in default and Flection shall, as a result, be entitled, without issuing any notice to the Supplier declaring the Supplier being in default and without judicial intervention:
- a) to suspend performing its obligations arising out of the Agreement until performance of the obligations on the part of the Supplier shall have been sufficiently ensured for; and/or
  - b) to dissolve the Agreement with the Supplier, in whole or in part;
  - c) all this without prejudice to the other and further rights retained by Flection under any Agreement it may have concluded with the Supplier without Flection being bound to pay any compensation for damage.
- 12.2 If the Supplier shall not have performed its obligations (in full), in the case of bankruptcy, (provisional) suspension of payments, cessation of activities or the company of the Supplier going into liquidation, all agreements concluded with the Supplier shall lawfully be dissolved, unless Flection shall notify the Supplier within a reasonable time period that it wishes performance be made of all the obligations of the Supplier, in which case, Flection shall be entitled, without issuing any notice of the Supplier being in default, to postpone performing its obligations arising out of the Agreement until performance on the part of the Supplier shall have been sufficiently ensured for under whatever agreement without Flection being bound to pay any compensation for damage.

**13. Complete and full Agreement**

The Agreement, including all the general terms and conditions of Flection which shall be applicable to it shall constitute a complete reflection of the rights and obligations of parties and shall take the place of all previous written and verbal arrangements, declarations, statements and/or behaviour of parties.

**14. Applicable law, competent Judge**

- 14.1 These General Terms and Conditions and all Agreements shall be subject to and governed by the law of the Netherlands.
- 14.2 Any and all disputes which might arise further to the Agreements or these General Terms and Conditions shall, to the extent that the terms of mandatory law prescribes otherwise, remain subject to the ruling of the competent Judge of the District Court of Utrecht, the Netherlands, with the proviso that Flection shall retain the right to make a claim in law pending, simultaneously or not, against the Supplier with other judicial fora which are competent pursuant to national or international rules of law to be made cognizant of any such claims. The foregoing does not prevent parties from exercising their rights to lodge appeals.
- 14.3 The applicability of the stipulations of the Vienna Mercantile Treaty is excluded.

These General Terms and Conditions were lodged on 29 May 2006 with the Chamber of Commerce, "Rivierenland" at Tiel, the Netherlands, under number 24118540.