



GENERAL TERMS AND CONDITIONS OF SALES APPLIED TO PRODUCTS AND SERVICES 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) **Customer:** 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 an Agreement;
- c) **Agreement:** each and every agreement which is concluded between Flection and a Customer, and each and every amendment or supplement thereto, 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 concluded for and in connection with Products or Services;
- 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, PC's, notebooks, monitors, servers, printers and peripheral equipment and/or separate components of those goods, intended to be sold and other than Equipment;
- e) **Services:** all services rendered by Flection for a Customer, including, but not limited to "Refurbishment activities", consisting of, among other things, collating (technical) information about Equipment, removing data, repairing, replacing, packaging and/or destroying ICT materials and computer equipment in the broadest senses of the words, monitors, servers, printers and peripheral equipment and/or separate components of those goods;
- f) **Equipment:** all goods which are the subject of Services, other than Products;
- g) **Order:** each and every order placed by a Customer in whatever form;
- h) **Order confirmation:** each and every written confirmation made of an order by Flection, including a confirmation made by fax message and electronic data traffic (e-mail);
- i) **Software:** computer programmes in the broadest sense of the words, made by 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 Customer.
- 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 applicable shall be respected and honoured.
- 2.3 The applicability of any general or specific terms and conditions or stipulations imposed by the Customer is expressly rejected by Flection.

3. Offers or tenders made and entering into and concluding Agreements and designating Products and Services

- 3.1 An offer, tender or price quotation shall not bind Flection and shall solely be deemed to be an invitation to the Customer to place an Order.
- 3.2 An Agreement shall be deemed to have been concluded if and to the extent Flection accepts, in writing, an Order placed by a Customer by sending an Order Confirmation or if Flection performs and fills and Order.
- 3.3 Flection shall retain the right to refuse an Order without being bound to give reasons for doing so and shall not be liable for damage which is sustained directly or indirectly as a result thereof. If Flection conducts any activity at the request of a Customer prior to concluding an Agreement, the Customer shall pay Flection for that activity in compliance with the rates and scale of charges which shall apply at the time with Flection.
- 3.4 All information provided by Flection concerning numbers, dimensions, weights or other designations, including samples, illustrations, descriptions, drawings and models shall be made with due care but Flection is unable to guarantee that no divergences therefrom shall apply. Information and designations of whatever nature shall not be binding for Flection.
- 3.5 If the Agreement is concluded electronically, the Customer shall be aware of which technical steps shall lead to the Agreement being concluded, or the Agreement shall be filed and also be accessible in the languages in which the Agreement may be concluded. Flection shall not be bound to provide information prior to the Agreement being concluded to the Customer unless the Customer does not act in the capacity of conducting company activities or professional activities. Neither is Flection bound to provide information as to whether it supports certain codes of practice or indicate electronically suchlike to the Customer, unless the Customer does not act in the capacity of conducting company activities or professional activities.
- 3.6 Flection shall solely be lawfully represented in connection with Order by persons registered as signatories, holders of powers of attorney, or Company Directors, in the trade registry of the competent Chamber(s) of Commerce.

4. Amendments and supplements

- 4.1 Amendments and supplements to any stipulations 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 notice being issued to that effect by Flection to the Customer. 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 application from the date of the notice in question to all new Agreements as well as to all still currently valid Agreement, to the extent the latter shall be performed after the date of the aforementioned notice.

5. Prices and fees and scales of charges

- 5.1 All prices and fees and scales of charges applied by Flection are expressed in Euros, and do not include Value Added Tax, unless determined otherwise. Unless determined otherwise and agreed, the costs of packaging shall be charged to the Customer as shall the costs of shipment, transport, import and export duties and excise duties, as well as all other levies or taxes imposed on and in connection with the Products and Services.
- 5.2 Each change to the factors which influence the prices and fees and scales of charges applied by Flection, including purchase prices, currency exchange rates, import and export duties, insurance rates, freight and carriage rates and other levies and taxes, may be passed on to the Customer by Flection. Flection may unilaterally amend prices and fees and scales of charges agreed. If a price/rate increase is applied, other than pursuant to a lawful price/rate increase, within three (3) months after concluding the Agreement, the Customer shall retain the right to dissolve the Agreement. Flection shall not under those circumstances be bound to pay the Customer any compensation for damage.

6. Payment

- 6.1 Aside from when other arrangements shall have been made, the Customer shall pay amounts invoiced to it without applying any discounts, off-setting or postponing payment, immediately upon delivery being made and effect payments in full at the office of Flection or by transferring that due from the Customer to a bank account designated by Flection. If the Agreement is concluded electronically, Flection, in principle, solely accepts pre-payment by bank transfer.
- 6.2 Flection may require the Customer to effect pre-payments or advance payments at any and all times and may also retain the right to require the Customer to provide surety for payment of the purchase price, for which the costs incurred shall be for the account of the Customer. If the surety required is not provided, Flection retains the right to postpone the performance of its obligations.

- 6.3 Solely due to the expiry of the payment period, the Customer shall be deemed to be in default and lawful interest shall be due from the Customer pursuant to the application of art. 6:119 or 6:119a of the Civil Code of the Netherlands. At that time all receivables due to Flection from the Customer arising out of the Agreement in question and further agreements connected therewith shall become due in full and immediately. Aside from lawful interest, the Customer shall also be due to pay contractual interest amounting to 1% of the outstanding amount due, per months, or a part thereof.
- 6.4 If the Customer is declared bankrupt or if the Customer is granted suspension of payments, or if the lawful debt clearance rules and regulations shall be declared applicable or if the Customer ceases trading, or if the Customer makes arrangements with its creditors to clear its debts, or if the Customer's assets are frozen or if the Customer loses control of its assets or part thereof in some other manner, all receivables due to Flection shall become due in full and immediately.
- 6.5 All legal costs and out of court costs incurred by Flection pursuant to collecting its receivable(s) shall be for the account of the Customer. The out of court costs to be reimbursed shall at least amount to 15% of the total of the still outstanding amount as well as €500.00, and those costs shall also have Value Added Tax added to them, and they shall be due without prejudice to the right retained by Flection to claim the out of court costs it shall have actually incurred.
- 6.6 If the Order is placed by multiple Customers, all Customers shall be singly and severally liable for performing the obligations arising out of this Agreement.
- 7. Delivery times**
- 7.1 The delivery time concerns the delivery of Products as well as that for rendering Services.
- 7.2 The delivery time indicated by Flection is based on the circumstances which applied at the time the Agreement was concluded, and where dependent on the activities of third parties, on the information provided by those third parties to Flection. The delivery time shall be complied with and adhered to as far as shall be possible but is not a deadline and is non-binding.
- 7.3 The delivery time shall be determined on the date of the Order Confirmation issued by Flection or, in connection with Services, the day on which the Equipment shall arrive at the location designated by Flection, aside from when other arrangements shall have been made. If Flection requires information or auxiliaries to perform the terms of the Agreement which shall be required to be provided by the Customer, the delivery time shall be set once the information or auxiliaries required shall be in the possession of Flection but no sooner than on the date of the Order Confirmation, or, in connection with Services, the day on which the Equipment arrives at the location designated by Flection.
- 7.4 Exceeding a delivery time shall not entitle the Customer to receive any compensation for damage. The Customer shall solely be entitled to dissolve the Agreement if in all reasonableness it may not be required of the Customer that it maintain the terms of the Agreement unamended and if moreover, fourteen (14) days shall have elapsed after a written notice declaring Flection to be in default in connection with exceeding the delivery date without the Products in question being delivered by Flection or the Services in question being rendered by Flection. In that case, the Customer shall not be entitled to receive compensation for damage in that connection.
- 7.5 Flection retains the right to make supply in parts at any and all times.
- 8. Delivery and risk**
- 8.1 All deliveries, supplies etc. of Products and the rendering of Services shall be made at the (warehouse) of Flection at Pascalweg 13 at (4104 BE) Culemborg, the Netherlands, aside from when other arrangements shall have been made.
- 8.2 The risk of the Products and the packaging thereof shall be transferred to the Customer at the time on which the Products are ready for shipment and the delivery of Products shall always be for account and risk of the Customer. Equipment shall, at any and all times and always be, for the account and risk of the Customer. The transport of Equipment shall be made for the account and risk of the Customer.
- 8.3 The delivery of Products cash on delivery shall solely be made to the extent the sales price of the Products in question is collectively less than €2,500.00.
- 8.4 The Customer shall ensure that nothing shall constitute an obstacle to the agreed delivery times being met, including Product delivery times and installation times.
- 8.5 Should the Customer not be able to take the Product or not be able to take the Products in a timely manner, then without being declared in default it shall be deemed to be in default. Flection shall then be entitled to store the Products for the account and risk of the Customer or sell the Products to a third party. The Customer shall remain due to pay Flection the purchase price, increased by interest and costs incurred (as a form of compensation for damage) but in the case in question less the net revenue generated by the aforementioned sale of the Products to that third party.
- 8.6 If use if made by Flection of borrowed packaging, it shall be required to be returned as soon as possible but no later than within fourteen (14) days after the Products shall have been delivered or, in connection with Equipment, after its arrival at its destination, which packaging shall be required to be returned to Flection empty and undamaged. The Customer shall be bound to designate this packaging material as the property of Flection and maintain it in good condition. Exceeding the aforementioned time period shall entitle Flection to replace the material(s) in question for which the costs incurred shall be for the account of the Customer.
- 9. Software**
- 9.1 If Software is installed on Products or on Equipment, Flection shall not guarantee that the Customer acquires the right to use that Software. Flection shall not be a party to any agreement concluded between the Customer and the party entitled to use the Software. To the extent any user right is provided to the Customer this shall be for the account and risk of the party entitled to the Software.
- 9.2 Only when an agreement to use the Software shall have been concluded between the Customer and the party entitled to the Software shall the Customer be entitled to make use of the Software. The scale and scope of the user right granted to the Customer shall be determined by the terms and conditions imposed on the Customer by the party entitled to the Software.
- 9.3 If Software is installed on Products or on Equipment by Flection at the request of the Customer, the Customer shall ensure that Flection shall acquire the right from the party entitled to the Software to install that Software or have that Software installed and the Customer shall indemnify Flection from and against any claims made by the party entitled to the Software in this connection.
- 9.4 Flection shall not be liable in respect of the Customer for any damage sustained pursuant to the Software which shall have been installed on Products or Equipment pursuant to article 9.1 and the Customer shall moreover indemnify Flection from and against any and all claims made by third parties in that connection as well as from and against any infringements of rights concerning the (installation of) Software.
- 10. Right of (property) retention**
- 10.1 The ownership of the Products shall only be transferred to the Customer, notwithstanding de facto delivery thereof, once the Customer shall have paid all that due from it in connection with the Products to Flection, in full and in the broadest senses of the words.
- 10.2 Each and every payment received from the Customer shall first be deemed to defray those receivables which Flection has due to it from the Customer in connection with which Flection has no right of property retention in 10.1. Thereafter, each and every payment received from the Customer shall firstly be deemed to defray any other interest and costs due to Flection from the Customer.
- 10.3 Prior to the ownership of the Products being transferred to the Customer, the Customer shall not be entitled to let the Products to third parties or to permit third parties to make use of the Products or to pledge the Products to third parties or to encumber the Products in favour of third parties. The Customer shall solely be entitled to sell the Products prior to the ownership of those products being transferred to the Customer or to deliver those Product if and to the extent this shall be necessary in the frame of reference of the Customer conducting its normal company activities.
- 10.4 Any infringement of the aforementioned stipulation in 10.3 shall render the Customer, without any notice of being in default being required, due to pay an immediately due fine of €2,500.00 and the purchase price shall also become due immediately, without prejudice to all further receivables and claims due to Flection. Flection shall retain the right to have the Products returned to it by the Customer for the account and risk of the Customer for which the Customer shall afford Flection the necessary opportunity.
- 10.5 If and for as long as the ownership of the Products shall not have been transferred to the Customer, the Customer shall inform Flection, without delay, as to when this shall take place and when and if the Products are seized or when and if any other claim is made on them or any part of them.

- 10.6 Upon any court order freezing assets being served, bankruptcy declared or suspension of payments being granted (provisional or not), the Customer shall notify the court process server in question, the official receiver in bankruptcy or trustee in suspension of payments of the (property) rights retained by Flection.
- 11. Conformity, inspection and complaints**
- 11.1 The Customer shall be bound to carefully inspect the Products and Equipment immediately upon delivery at their destination or, if earlier, upon receipt, either itself or have that inspection carried out on its behalf by a third party.
- 11.2 Any complaints concerning flaws in Products or Equipment shall be required to be made no later than within eight (8) days after delivery thereof shall have been made, or, in connection with Services, upon arrival of Equipment at their place of destination, which complaints shall be required to be made in writing, to Flection under submission of the original invoice. Flaws which in all reasonableness could not have been discovered within the aforementioned time period shall be required to be notified in writing to Flection without delay.
- 11.3 The Customer shall co-operate in full with Flection in connection with any investigation made of the complaint, among other things, by affording Flection an opportunity to conduct an investigation on site or have an investigation conducted on site into the circumstances under which the Products were processed, used, installed and/or used.
- 11.4 The Customer shall in any case not be able to make any claims against Flection if the time period referred to in Article 11.2 shall not have been complied with of it Flection shall not have been afforded an opportunity to check the complaints made.
- 11.5 After the discovery of any flaw, the Customer shall be bound to cease making any use, processing or installation of the Products or Equipment in question without delay.
- 11.6 Until Flection shall have consented, under its conditions, and in writing, to returning the Products or Equipment, the Customer shall not be liberty to return those Products or Equipment. The costs of returning the Products or Equipment shall be for the Customer and shall remain for the risk of the Customer.
- 11.7 Should the Products or Equipment not pass inspection by Flection, Flection shall be entitled to repair or replace them using a similar product. The Customer shall, in any and all case, be required to make a back-up of any data it may have added to the hard-disk. Flection shall not be liable for any damage sustained concerning or connected with (loss of) data on the hard-disk or other installed additions. The Customer is aware that Products shall be stripped of all additions, among other things, by deleting data on the hard-disk.
- 11.8 Flaws concerning a separate batch of Products which is part of multiple batches supplied as one delivery solely grant the Customer the right to dissolve the whole Agreement if the Customer may not, in all reasonableness be required to maintain the remaining part of the Agreement.
- 11.9 Any complaints shall in no manner prejudice the payment and other obligations and performance thereof on the part of the Customer. The Customer may not derive any claims or rights in connection with flaws in Products or Equipment in respect of Flection for as long as the Customer shall not as yet have performed any obligation it has in respect of Flection.
- 12. Other obligations and responsibilities of the Customer**
- 12.1 The Customer shall be bound to investigate and test or have investigated or tested to see if the use of the Products is suitable for their intended use.
- 12.2 The Customer declares it is aware of the fact that the Products are not new, that they have previously been used by third parties and that the Products and the composition thereof (might) have been modified.
- 12.3 The Customer shall not remove in whole or in part any mark, brand or recognition devices on the Products and Equipment or make any mark, brand or recognition devices invisible in whole or in part.
- 12.4 All intellectual property rights to the Products and Equipment, brought about together with or at the behest of the Customer, or not, shall remain with Flection. Models, techniques and instruments used for the performance of the Agreement by Flection or made available to the Customer shall remain the property Flection. Publishing and notifying third parties of company information about Flection may solely be undertaken after permission shall have been granted to this end by Flection.
- 12.5 The Customer shall always provide Flection with all the information Flection needs in a timely manner and shall ensure that the information required is both correct and complete.
- 12.6 The Customer shall ensure that it shall have obtained all the necessary permissions and/or exemptions for the application and use of the Products and Equipment and shall indemnify Flection in this connection from and against any and all claims made by third parties which might result, directly or indirectly from the application or use of the Products and Equipment.
- 12.7 The Customer shall indemnify Flection from and against any and all claims made by third parties on the grounds of any infringement of rights, including rights of intellectual or industrial property and rights to protect private data and other (confidential) data, in connection with Products, Services, Equipment and Software.
- 12.8 If any infringement is claimed by a third party of any of the aforementioned rights referred to in Article 12.7, the Customer shall immediately cease making any such infringement and continue to desist therefrom and immediately inform Flection of this.
- 13. Force majeure**
- 13.1 Force majeure shall, on the part of Flection, be deemed to include any and all circumstances independent of the will of Flection preventing performance of obligations on the part of Flection in respect of the Customer, either in whole or in part or rendering it unreasonable to require Flection to perform its obligations in respect of the Customer, irrespective of whether or not this could have been foreseen at the time at which the Agreement was concluded. Among those circumstances shall be included: strikes, exclusions, stagnation or other problems with production on the part of Flection or its suppliers or among its own transport or transport arranged by third parties or the impossibility of providing labour or measures imposed by government bodies, and the lack of any permit to be obtained from a government body.
- 13.2 If Flection is not able to perform its obligations in respect of the Customer due to force majeure, those obligations shall be postponed for the duration of the force majeure prevailing.
- 13.3 If the duration of the force majeure shall have continued for three (3) months, both parties shall retain the right to dissolve the Agreement, in whole or in part, in writing. Should force majeure prevail, the Customer shall not retain any right to any compensation (for damage).
- 14. Guarantee**
- 14.1 The stipulations of this Article 14 shall also be applicable to Equipment.
- 14.2 Flection shall guarantee the Customer that for the period referred to in the Agreement, after the delivery of the Products, the Products shall function properly providing they are used normally and with care and providing that all instructions and other (guarantee) rules and regulations included, among other things, in the Agreement and the General Terms and Conditions shall have been fully and carefully complied with. Flection does not guarantee that no damages and imperfections shall manifest themselves in the finishing of the Products to the extent these do not detract from the functionality of the Products.
- 14.3 Invoking the aforementioned guarantee shall not prejudice performance being required of payment and other obligations on the part of the Customer in respect of Flection.
- 14.4 Invoking the aforementioned guarantee may no longer be done once the guarantee period shall have expired or if invoking the guarantee was not done immediately after discovering the flaw in question in the Products or if the Customer itself conducted activities without the written permission of Flection or had activities conducted without the written permission of Flection on the Products.
- 14.5 If, in the reasonable opinion of Flection, it shall have been satisfactorily demonstrated that the Products fails to function properly, Flection shall have the choice, either to replace the dysfunctional Products free of charge in exchange for the dysfunctional Products or to repair the dysfunctional Products properly or to grant the Customer a discount to be determined in mutual consultations on the (purchase) price.
- 14.6 If, in the light of meeting its obligations pursuant to its guarantee, dysfunctional (parts of) Products are replaced, they shall become the property of Flection. Products remain fully for the risk of the Customer should repair activities be conducted by Flection on Products.
- 14.7 The Customer shall be required, in any and all cases, to make a back-up of any data it might have added to the hard-disk. Flection shall not be liable for any damage concerning (loss of) data on the hard-disk or other installed additions. The Customer is aware of the fact that the Products shall be fully stripped of all additions, among other things, by means of deleting data from the hard-disk.

- 14.8 By conducting one of the activities referred to in Article 14.5, Flection shall be fully discharged in connection with having performed its guarantee obligations in full and shall not be bound or liable to pay any compensation (for damage) to the Customer. The guarantee period shall not then be prolonged or renewed.
- 15. Liability**
- 15.1 The liability of Flection in connection with failure to perform the terms of the Agreement shall be limited to no more than the invoice amount which shall have been invoiced to the Customer in connection with the Services and/or the Products in connection with which Flection has manifested attributable shortcomings.
- 15.2 The liability of Flection in connection with events covered by its company and business liability insurance policies shall be limited to the amount which in the case in question is paid out under the terms of that insurance.
- 15.3 For the remainder, the liability of Flection in respect of the Customer is excluded aside from in the case of deliberate actions or gross recklessness on the part of the management of Flection.
- 15.4 The Customer shall indemnify Flection from and against any and all claims made by third parties of whatever kind connected with an Agreement or arising out of the performance of an Agreement.
- 16. Dissolution**
- 16.1 If the Customer 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 Customer shall be deemed to be in default and Flection shall, as a result, be entitled, without issuing any notice to the Customer declaring the Customer 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 Customer shall have been sufficiently ensured for; and/or
 - b) to dissolve the Agreement with the Customer, 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 Customer without Flection being bound to pay any compensation for damage.
- 16.2 If the company of the Customer shall have applied for or have been declared bankrupt, or granted (provisional) suspension of payment or if it is granted and applies the lawful debt clearance scheme, ceases trading or goes into liquidation, or if its assets or a substantial part thereof are frozen, all Agreements concluded with the Customer shall be lawfully dissolved, unless Flection shall notify the Customer within a reasonable time period that it wishes the Customer to perform (part of) the Agreement(s), in which case, Flection shall be entitled, without issuing any notice declaring the Customer being in default:
- a) to postpone the performance of the Agreement(s) in question until payment shall have been sufficiently ensure for; and/or
 - b) to postpone any payment obligation it might have in respect of the Customer;
 - c) all this without prejudice to the other rights of Flection under whatever Agreement with the Customer without Flection being bound to make any payment of compensation for damage.
- 16.3 Should any event take place as referred to in 16.2, all receivables due to Flection from the Customer shall become due immediately and in full and Flection shall be entitled to repossess Products. In that case, Flection and its agents shall be entitled to enter the sites and buildings of the Customer with a view to repossessing the Products. The Customer shall then be bound to take all necessary measure in order to afford Flection an opportunity of exercising its rights.
- 17. The transfer of rights and obligations**
- 17.1 Flection may transfer any rights and obligations it has described in any Agreement with the Customer to third parties. If obligations which Flection has are transferred, Flection shall inform the Customer of this in advance and the Customer shall retain the right to terminate the Agreement as of the date on which the transfer would have taken place. Flection shall not be bound to pay any compensation for damage in this connection.
- 17.2 The Customer shall not be entitled to transfer its rights or obligations arising out of an Agreement to any third party without prior, written permission having been granted to this end by Flection.
- 18. Applicable law, competent Judge**
- 18.1 These General Terms and Conditions and all Agreement shall be subject to and governed by the law of the Netherlands.
- 18.2 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, with the proviso that Flection shall retain the right to make a claim in law pending, simultaneously or not, against the Customer with other judicial for a 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.
- 18.3 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.