



General Terms and Conditions of Purchase of NYCO Flexible Packaging GmbH (Solithurnstrasse 28, 3422 Kirchberg), hereinafter referred to as "NYCO"

Version dated September 2019

1. VALIDITY OF THE GENERAL TERMS AND CONDITIONS OF PURCHASE

Scope: These General Terms and Conditions of Purchase of NYCO (hereinafter referred to as "GPC"), together with any other written agreements between the SUPPLIER and NYCO, shall apply to all supply relationships between the SUPPLIER and NYCO, including the ordering of products and/or services provided by the SUPPLIER for NYCO and/or its customers and the licensing of software.

Subject to revocation by NYCO, these GPC shall also apply to all future deliveries by the SUPPLIER, even if they are not expressly agreed again. Any variances agreed shall only be valid for the delivery for which they are confirmed in writing.

1.1. Changes: The SUPPLIER will be informed of any changes to the GPC without delay. If the SUPPLIER does not raise a justified objection in writing within 30 calendar days of delivery of the changes, they shall be deemed accepted by him and shall enter into force simultaneously.

1.2. No validity of the SUPPLIER's GTCs: General Terms and Conditions or other SUPPLIER documents which replace, amend, supplement or contradict these AEB shall be expressly rejected and have no legal effect even if referred to in business correspondence.

2. ORDERS

2.1. Principle: Deliveries only take place based on orders by NYCO. Orders made by NYCO are only binding if placed in writing or electronically by NYCO or are confirmed following ordering on the telephone, specifying the order number in writing or electronically by the SUPPLIER.

2.2. Order confirmation: The SUPPLIER must deliver NYCO without delay, however at the latest five (5) working days after order receipt, an order confirmation, otherwise NYCO shall be entitled to revoke the order free of charge until NYCO receives the written confirmation.

2.3. Order number: The NYCO order number must be specified in all written communication, on the invoices and in the shipping documents.

2.4. Changes: NYCO can also demand changes to the order by the SUPPLIER after receipt of the order confirmation in as far as this is reasonable for the SUPPLIER. In such cases, prices and delivery dates must be adapted reasonably if required.

2.5. Oral statements: No rights can be derived against NYCO from agreements, information advice, etc. provided orally or on the telephone – except in case of gross negligence by NYCO. Such oral statements are only binding for NYCO if they are confirmed in writing by NYCO or if NYCO has provenly renounced the written form.

3. OBJECT OF PERFORMANCE AND PRODUCT CHANGES

3.1. Principle: The object of performance and scope of delivery are determined according to the order placed by NYCO.

3.2. Agreed quality: The SUPPLIER is bound to deliver or to provide the products and/or services ordered by NYCO in accordance with the contractual agreements. In particular, the SUPPLIER shall ensure the quality agreed according to the reference samples and declares that he will adhere to the quality requirements signed by him at all times. Variances shall only be permissible with prior written agreement by NYCO. Furthermore, the SUPPLIER shall be bound to apply environmentally friendly products and processes within the scope of the economic and technical possibilities.

3.3. Changes to the product: Changes to the material composition, design etc. are fundamentally prohibited in as far as NYCO has not given its prior written express approval.

If the SUPPLIER makes changes in the composition of the processed material or in the constructional design of its products and/or services compared to similar products and/or services previously supplied to NYCO, it shall be obliged to notify NYCO of this fact in writing in good time in advance. The SUPPLIER is obliged to provide NYCO product samples of the changed products including product specifications for an analysis and qualification procedure.

The SUPPLIER ensures that he is able to supply NYCO with products and/or services with the originally agreed quality until this internal NYCO analysis and qualification procedure has been concluded.

4. COMPLIANCE

4.1. Legal conformity / State-of-the-art: The products and/or services will be manufactured in accordance with and in compliance with all laws, provisions and regulations applicable in the EU/EFTA (hereinafter: legislation). In particular, the products and/or services from all applicable legislation in the SUPPLIER's country of origin, in Switzerland and in the country of destination (seat of the third-party company supplied by NYCO if known to the SUPPLIER). The SUPPLIER assures that the valid legislation, future support services, (further) sales do not restrict the use or (further) processing of the products and/or services.

The SUPPLIER guarantees that the products and/or services are executed using appropriate material and the accepted good engineering practice and meet the legal and official safety and environmental regulations.

4.2. Controls: NYCO shall be entitled to conduct comprehensive audits of the SUPPLIER and/or its subcontractors by prior appointment. In particular, NYCO shall also be entitled to conduct a factory inspection on the occasion of such audits, to inspect quality management documents relating to products and/or services supplied to NYCO to inspect verification documents and to access existing reference samples. Such control measures do not relieve the SUPPLIER of his duties.

5. DELIVERY

5.1. Delivery terms: The terms of delivery are determined in the order and by the ICC Incoterms 2010. Subject to deviating written agreements between the parties, the products and/or services are delivered to the NYCO seat (DAP-Kirchberg BE) duty paid.

5.2. Place of fulfilment: If not agreed otherwise in writing, the place of destination named by NYCO is the place of fulfilment for all deliveries and or services. If suchlike is not named, the place of fulfilment is the NYCO seat.

5.3. Adherence to the delivery date and delivery date monitoring: The delivery date is decisive for the fulfilment of the contract. The SUPPLIER agrees to transmit production planning details and to regularly present progress reports on adherence to the schedule if this is demanded orally or in written form by NYCO. The SUPPLIER agrees to undertake all necessary measures for delivery date monitoring including delivery date monitoring of the subcontractors if required, in order to ensure that the delivery date or every other relevant date agreed in the order is adhered to.

5.4. Delivery time: Deliveries must be made during normal business hours. These must be requested from NYCO. Early delivery may only take place if agreed in writing and shall not effect the agreed payment date. If deliveries arrive early without prior written agreement by NYCO, NYCO shall be entitled either to reject the goods or to store them at the SUPPLIER's expense.

5.5. Partial deliveries: Partial deliveries shall only be permissible with prior written agreement by NYCO.

5.6. Procedure in case of foreseeable delays in delivery by the SUPPLIER: The SUPPLIER must inform NYCO immediately in writing of any foreseeable delays in delivery dates and periods, stating the reasons and expected duration of the delay. The SUPPLIER shall take all necessary measures at his own expense to meet the agreed delivery date. NYCO reserves the right to demand the SUPPLIER to immediately take any action NYCO reasonably deems necessary to meet the delivery date.

5.7. Withdrawal option: If the SUPPLIER fails to comply with the provisions herein and/or NYCO further determines that SUPPLIER's performance will result in a delay in delivery not caused by force majeure, NYCO shall have the right to rescind the contract in whole or in part after giving prior written notice to the SUPPLIER and in accordance with the provisions herein. Should delay be caused by force majeure, the provisions according to Clause. 12 shall be applied.

5.8. Packaging: The products are packaged properly and labelled in accordance with instructions provided by NYCO. Superfluous packaging and packaging which is not environmentally friendly must be avoided.

The seller shall be liable for all damages to products or as a consequence of services which arise due to inadequate packaging.

All packaging material used shall remain the property of the SUPPLIER. In as far as not agreed differently, NYCO shall be bound to keep the packaging material available for collection by the SUPPLIER for seven (7) days. Should the packaging material not be collected during this period by the SUPPLIER and NYCO has to dispose of it, NYCO shall be entitled to charge the SUPPLIER the costs incurred for this.

5.9. Delivery documents: Proper delivery papers/documents must be enclosed with each delivery. These must contain the object of purchase or service, the individual order items, the article numbers including the article description, the quantity, the net weight, the roll and pallet number, the order and order numbers, the batch, the specification manufacturing and consumption dates as well as an indication of any existing allergens.

Regulations on the transport of dangerous goods must be observed, in particular dangerous goods must be marked as such.

If partial deliveries by the SUPPLIER are based on written authorisation by NYCO pursuant to Clause 5.5, these shall be expressly marked as such. The delivery papers/documents from the previous partial delivery of a specific order must explicitly be marked as "residual consignments".

If products and/or services from different orders (or parts thereof) are delivered together as a single delivery, all relevant order numbers must be listed in-full (without abbreviations and separated respectively by commas) on the delivery papers/documents.



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The SUPPLIER shall bear the costs of consequences of incorrect, incomplete or delivery papers/documents received late.

5.10. Traceability: The product labelling must always enable uninterrupted traceability.

The SUPPLIER warrants NYCO, upon first request and within a reasonable period of time, that it will be able to demonstrate to NYCO from which concrete delivery or batch a specific article originates for a period of two years after delivery.

5.11. Administration fee for incorrect and/or incomplete deliveries and/or services: In the event of incorrect delivery (e.g. incorrect customs invoice, incorrect product labelling point, deviations from the incoming goods standard, incorrect delivery papers pursuant to Section 5.9 above, early delivery etc.) and notifications of defects, the SUPPLIER may be charged a lump sum of CHF 250.00 for administrative expenses.

6. DELIVERY AND PERFORMANCE PERIOD AND DELAY

6.1. Principle: Agreed dates and deadlines shall be binding. The receipt of the products and/or the provision of the service at NYCO's place of business shall be decisive for compliance with the delivery date or the performance period. The SUPPLIER is bound to inform NYCO in writing without delay if it is not possible to adhere to the agreed delivery or performance time. This notification does not relieve the SUPPLIER of his liability due to delay.

6.2. Expiry date: The SUPPLIER shall also be in default without warning as soon as the respective binding delivery date or performance period is exceeded. The acceptance of a late delivery does not mean relinquishment of any compensation due to default in delivery.

6.3. Consequences of default: Except in cases of force majeure pursuant to Clause 12, NYCO may insist on subsequent performance and demand compensation for the damage incurred without setting a grace period if the SUPPLIER is in default. Alternatively, NYCO shall be entitled to waive subsequent performance or to obtain the corresponding delivery from a third party at the SUPPLIER's expense or to rescind the contract. Despite delay, the performance will not be waived without express notification. Goods arriving late which are unsellable can be returned to the SUPPLIER and or be destroyed at the SUPPLIER's expense, charging the agreed purchase price as well as the damage incurred. The right to claim damages for non-performance remains reserved in any case.

6.4. Contractual penalty in case of delay: The SUPPLIER undertakes to pay 1% of the purchase price, limited to a maximum of ten (10) weeks of delay, for each commenced calendar week of delay in delivery as a contractual penalty irrespective of fault or proof of damage. Raw materials bottlenecks and delays from suppliers and sub-suppliers shall not be valid as force majeure. Moreover, NYCO shall be entitled to assert a claim for the proven damage caused by the delay in accordance with the statutory provisions.

6.5. Right of rescission: If the SUPPLIER defaults with the delivery, NYCO may insist on subsequent delivery. NYCO sets the SUPPLIER a reasonable period for subsequent fulfillment. If the SUPPLIER also allows this reasonable grace period to elapse unused, NYCO shall again be entitled to all rights of default, in particular also the right to withdraw from the contract by written notice. The granting of a grace period by NYCO shall not release the SUPPLIER from payment of the contractual penalty pursuant to Clause 6.4. NYCO reserves the right to assert claims for damages in any case.

7. INTERRUPTION AND RESCISSION OF SUPPLY

7.1. Interruption of supply: If circumstances for which NYCO is not responsible lead to a shutdown or impairment of NYCO's operations or of an NYCO customer for whom the delivery is intended, NYCO's obligation to accept shall not apply for the duration of the shutdown or impairment of the operations. The SUPPLIER's claims for damages against NYCO are excluded to this extent.

7.2. Rescission: NYCO is entitled to withdraw from the contract in whole or in-part if the delivery is no longer usable from an economic point of view due to circumstances for which NYCO is not responsible.

NYCO is entitled to withdraw from the contract in whole or in-part for cause. Good cause exists in the event of natural disasters, import and export restrictions, strikes, lockouts or other operational disruptions, both at the SUPPLIER's and NYCO's.

Furthermore, NYCO is entitled to exercise the statutory rights of withdrawal.

7.3. Consequences of withdrawal: If NYCO withdraws from the contract completely or in-part, the SUPPLIER's payment claims are cancelled. Any down payments made shall be refunded to NYCO immediately without deduction. A right of retention does not exist for the SUPPLIER.

8. PRICE AND PAYMENT

8.1. Price: The prices specified in the order are fixed prices and no further remuneration for the products and/or services shall be paid to the SUPPLIER. No changes whatsoever shall be made, *irrespective of the*

reason, in particular changes to the raw material price and/or to a currency value. The prices and tariffs quoted do not include VAT, but, unless otherwise stated in the order, they include all costs for transport, packaging, travel, accommodation and construction work, import duties and other taxes, duties and costs.

8.2. Invoice: The SUPPLIER shall submit an invoice containing the information specified in the order (in particular order number, product and/or service designation, quantity and weight).

8.3. Payment: Undisputed and correct invoices from the SUPPLIER shall only be paid after complete delivery. Unless otherwise agreed in writing, the following terms of payment shall apply:

- Payment within 30 days after receipt of the complete delivery and invoice in accordance with the contract less 3% discount;
- Payment within 45 days after receipt of the complete delivery and invoice in accordance with the contract less 2% discount;
- Net payment within 60 days after receipt of the complete delivery and invoice in accordance with the contract.

NYCO reserves the right to withhold payment for any defects found in the products and/or services supplied.

If an invoice is issued prior to the agreed delivery date due to early delivery and acceptance, the agreed delivery date shall be deemed as the invoice date and after three (3) further working days the invoice shall be viewed as received.

8.4. Offsetting: NYCO shall be entitled at all times to set off any amounts owed by the SUPPLIER to NYCO with lump sums, irrespective of when they are due and payable, including any contractual penalties to be paid by the seller.

8.5. Administration fee for incorrect and/or incomplete invoices: If the invoice does not include all the information in Clause 8.2, a fixed amount of CHF 250.00 can be charged respectively for each item missing to the SUPPLIER for administrative expenses.

9. TRANSFER OF OWNERSHIP AND RISK

9.1. Transfer of ownership: Ownership of the products and/or services shall pass to NYCO respectively at the earlier of the two dates, either upon i) delivery to NYCO or ii) payment by NYCO of the first instalment for the relevant products and/or services. In the latter case, the seller shall label all the goods already owned by NYCO with "NYCO's property" and stores them separately.

9.2. Transfer of risk: Risk is transferred to NYCO when and in as far as the products and/or services are properly delivered and handed over or approved by NYCO at the specified destination.

If the required shipping documents for a delivery are not duly served or served late, the delivery shall be stored at the SUPPLIER's expense and risk until they are received.

9.3. Entry in the Registry of Retention of Title: Retention of title shall only be effective if the retention has been entered in the respective Registry of Retention (Art. 715 et seq. of the ZGB [Swiss Civil Code]). Retention of title by the SUPPLIER may only be exercised in case of prior withdrawal from the contract.

10. MATERIAL GUARANTEE

10.1. Liability for defects: The SUPPLIER shall be liable for direct damages due to defective goods. Each deviation from the quality normally assumed or from authoritative samples, specimens, assurances or packaging specifications etc. is viewed to be defective. Costs or damages caused by defective or inappropriate packaging and/or incorrect addressing shall also be borne by the SUPPLIER.

10.2. Approval: In as far as the ordinary course of business permits, the products and/or services shall be inspected for obvious defects and transport damage upon their arrival at the place of destination. Under the same conditions, the delivered products and/or services shall be checked against the delivery notes and product labels for their conformity with the information in the order confirmation, in particular with regard to order quantity and product identity. No further inspection duty or obligation exists. The SUPPLIER waives the claim of late notification of defects.

10.3. Period for notification of defects / Limitation of material warranty claims: NYCO may give notice of any defect up to the expiration date and, no expiration date exists, six (6) months after the expiration of the warranty period applicable to the end customer. NYCO shall not be bound by any statutory or SUPPLIER's review, complaint and/or expiration periods. The SUPPLIER waives the objection that the goods are deemed accepted if notification is not given immediately after discovery.

10.4. Electoral law: In the event of a material defect, NYCO shall be entitled to demand either cancellation of the contract, reduction of the purchase price, rectification of the defect or replacement delivery of the defective goods. Even if only individual components of a delivery are defective, NYCO shall be entitled to demand cancellation or replacement delivery of the entire delivery.



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10.5. Returning defective goods: If NYCO decides in favour of cancellation or replacements delivery, the goods shall be returned at the SUPPLIER's expense and risk or be made available for collection from NYCO over a reasonable period. Goods not collected within the period and perishable goods may be destroyed by NYCO at the SUPPLIER's expense.

10.6. Replacement purchasing from third parties: If the SUPPLIER is unable to make replacement delivery without delay or within the period determined by NYCO, NYCO shall be entitled to purchase the corresponding delivery from third parties at the SUPPLIER's expense without further notice.

10.7. Waiving future deliveries: If defects occur in an individual delivery or in an individual goods call-off, NYCO shall be entitled, in addition to the claim to cancellation, reduction, elimination of defects or replacement delivery, to waive any outstanding deliveries of the same goods and/or to withdraw from the contract with immediate effect without any duty of compensation.

10.8. Liability: The SUPPLIER shall be liable to NYCO for all direct damages incurred by NYCO or its contractual partners in connection with the delivery of defective goods, rectification of defects, cancellation or replacement delivery.

10.9. Complaint: If NYCO suffers damage due to a defect, a defect order is created and sent to the SUPPLIER. It shall be deemed accepted unless objected to in writing within two weeks, stating the reasons.

11. LEGAL WARRANTY

11.1. Third-party rights: The SUPPLIER guarantees that the delivery does not violate the rights of any third parties, in particular of a contractual, material and/or immaterial nature. The SUPPLIER and NYCO shall inform each other without delay of any risks of a violation of the law becoming known to them or of an alleged violation of the law and shall counteract such claims by mutual agreement.

11.2. Consequences of violation of the law: If NYCO determines that the goods or a part thereof violate the rights of third parties, it may withdraw from the entire contract and/or return the goods already purchased for full compensation. The SUPPLIER undertakes to indemnify NYCO and its customers against all direct and indirect damages and costs incurred by NYCO and/or its customers as a result of non-compliance with this warranty assurance. If rights of third parties are violated by a contractual use of the supplies, NYCO shall in particular be entitled to acquire the necessary rights of use from the rights holder at the SUPPLIER's expense. Otherwise, NYCO's rights shall be governed by the statutory provisions in the event of defects of title.

11.3. Supporting NYCO in litigation: If NYCO is involved in a litigation with third parties, the SUPPLIER shall be informed and be obliged from this time on to unconditionally support NYCO or its contractual partners in the out-of-court and/or judicial conduct of the legal dispute.

11.4. Limitation: The limitation period for defects of title is ten (10) years.

12. RIGHTS OF WITHDRAWAL IN CASE OF FORCE MAJEURE

12.1. General: Force majeure exists if:

- the event is exceptional, unpredictable and exogenous;
- the event is unavoidable;
- the event occurs completely unexpectedly; or
- the event is independent of human behaviour, i.e. it originates from outside the parties' sphere of influence and could not be prevented despite the greatest possible care.

12.2. Right of rescission: If the need for the ordered products and/or services ceases to exist due to events of force majeure occurring after the conclusion of the contract, NYCO may withdraw from the contract in whole or in-part or demand performance at a later point in time without the SUPPLIER being entitled to any claims against NYCO.

13. QUALITY ASSURANCE

13.1. Data backup: The SUPPLIER undertakes to establish and maintain administrative processes which enable it to track all data relating to a specific production run (including batch information, production data, any externally procured components and sources) and to keep them for a period of at least ten (10) years from the production date.

13.2. Samples: The SUPPLIER shall retain samples from all batches for a minimum period of two (2) years from the production date.

13.3. Certifications: The SUPPLIER has a certified quality management system, which incorporates all relevant certificates for cooperation with NYCO and ensures NYCO that it will maintain these certificates permanently. Moreover, the SUPPLIER ensures active environmental and work safety management.

NYCO expressly reserves the right to check the SUPPLIER's adherence to such a system by the SUPPLIER at its premises.

14. LIABILITY

The SUPPLIER shall be liable for all consequential damages (e.g. in connection with recalls, personal injury, death and/or property damage) resulting from acts or omissions by the SUPPLIER or defects resulting from faulty working devices or construction, material or processing defects of the products and/or services and shall indemnify and hold NYCO harmless in this respect.

15. INSURANCE

The SUPPLIER shall take out and maintain insurance policies, including, but not limited to, in the areas of general liability and product liability, whose policies cover the risks during the execution of the order and for a period of five (5) years from the seller's performance of its obligations. The SUPPLIER shall promptly present the relevant insurance policies to NYCO upon the company's initial request. All of the insurance policies referred to above include a waiver of recourse towards NYCO as well as NYCO's customers who are named or recorded as co-insured.

16. CONFIDENTIALITY

16.1. Principle: The SUPPLIER undertakes to keep all information which he consciously or per chance receives from NYCO within the scope of the business relationship, such as technical information, drawings, trade secrets, details of orders (e.g. quantities, information on technical execution, conditions, etc.) or knowledge which the SUPPLIER gains from the information provided by NYCO confidential vis-à-vis third parties.

The SUPPLIER takes appropriate measures in order to ensure that the duty of confidentiality is adhered to by his employees and auxiliary helpers to the same extent.

16.2. Reference to NYCO: The inclusion of NYCO in a reference list, referral to an existing business relationship with NYCO or the use of NYCO's order for advertising purposes shall only be permitted with NYCO's prior written consent.

16.3. Continuation: The duty of confidentiality remains for a further five (5) years following the full termination of the contract.

17. ASSIGNMENT AND COMMISSIONING SUBCONTRACTORS

17.1. Assignment of receivables: The SUPPLIER's claims against NYCO may neither be assigned nor pledged in whole or in-part without NYCO's prior consent. If the SUPPLIER nevertheless assigns his claims against NYCO to third parties or has them collected by third parties, NYCO may, at its option and with discharging effect, make payments to both the SUPPLIER and the third party.

17.2. Commissioning subcontractors: The SUPPLIER shall not be entitled to commission a subcontractor with manufacturing or providing the products or services ordered by NYCO without prior written agreement with NYCO. However, any approval by NYCO does not release the supplier from its obligation to NYCO.

NYCO shall have the right to assign or transfer the order to an affiliate or to the owner and owner's successors and authorised representatives without the SUPPLIER's prior consent.

18. SEVERABILITY CLAUSE

The invalidity of individual provisions of these GPC or the individual contracts shall not affect the validity of the remaining provisions. Ineffective provisions or gaps in the contract shall be replaced by provisions which come as close as possible to the economic meaning and the intended economic purpose of the ineffective or invalid provision.

19. LEGAL DOMICILE AND APPLICABLE LAW

19.1. Legal domicile: The exclusive legal domicile for all disputes arising from or in connection with the order and/or the GPC shall be the competent courts at the seat of NYCO's registered office.

19.2. Applicable law: All legal relationships between the parties shall be governed exclusively by Swiss law, to the complete exclusion of any conflict of law provisions and to the exclusion of the United Nations Vienna Convention on Contracts for the International Sale of Goods dated 11.04.1980.