

## **Lexmark Standard Terms and Conditions of Purchase.**

### **Article 1: OVERVIEW**

The following Conditions of Purchase (the "Terms") shall apply to all Orders from the Lexmark entity listed on the front page of the Order for the purchase of goods (the "Goods") or services (the "Services") from the party to whom the purchase order is addressed (the "Supplier"). This purchase order, together with any documents incorporated herein by reference, constitutes the entire agreement between Lexmark and the Supplier (the "Order") and any and all prior or contemporaneous written or oral agreements existing between the parties and related to the subject matter hereof are expressly canceled. These Terms expressly exclude any of Supplier's terms and conditions of sale or any other document issued by Supplier in connection with this Order. If a master agreement between the parties is in effect as of the Order Date which includes the Goods/Services in this Order, then the terms of the master agreement shall prevail over any inconsistent terms in this Order. Lexmark may make changes to the Order at any time by issuing a "Change to Purchase Order" to Supplier. This Order shall be considered accepted by Supplier upon the earlier of: a) delivery of the Goods/Services, or b) five (5) business days after Supplier's receipt.

### **ARTICLE 2: DELIVERY**

Time is of the essence in delivery of the Goods/Services hereunder. Supplier shall deliver the Goods and/or perform the Services at the delivery point and on the date(s) specified in this Order (the "Delivery Date"). Delivery of Goods shall occur between the hours of 8:00 am to 12:00 pm and between 1:30 pm to 4:00 pm Monday thru Friday or as otherwise agreed by the parties.

Supplier certifies that any chemical substance(s) or hazardous materials furnished pursuant to this Order have been properly labeled, and that proper information on the substance(s), e.g., material safety data sheets, have been provided to Lexmark pursuant to all federal, state and local laws and regulations.

### **ARTICLE 3: COUNTRY OF ORIGIN**

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

### **ARTICLE 4: SHIPPING**

Goods must be packaged according to industry standards for the product and means of transportation. Packaging shall reflect any instructions on the front page of this Order, show quantity or gross and net weights, and shall comply with all local and international regulations for transport and transit. All documents associated or included with the delivery of the Goods/Services shall include this Order number. Transportation routing shall be as indicated in transportation routing guidelines on the face of this Order. Prepaid transportation charges must be supported by a paid freight bill or equivalent. Unless otherwise specified, Supplier shall ship Delivered at Point (DAP).

Only the weight and quantity acknowledged by Lexmark will be taken into consideration and be decisive for the payment of invoices. Any expenses resulting from omissions or errors on the delivery form shall be the responsibility of Supplier.

### **ARTICLE 5: TRANSFER OF TITLE**

Unless otherwise specified in this Order and regardless of the shipment terms above, title to the Goods remains with Supplier and will not pass to Lexmark until the Goods are delivered to and accepted by Lexmark in accordance with this Order.

### **ARTICLE 6: INSPECTION**

Lexmark reserves the right to inspect the Goods on or after the Delivery Date. Lexmark may reject and return to Supplier at Supplier's risk, all or any portion of the Goods if Lexmark determines the Goods are defective or non-conforming. Inspection, approval and/or payment shall not constitute acceptance of the Goods nor act as a waiver of Lexmark's right to inspect or right to any remedies.

### **ARTICLE 7: PRICING**

The price of the Goods/Services is the fixed price stated in this Order (the "Price"). The Price

shall include all federal, state, and local taxes, including but not limited to, sales and use taxes unless otherwise agreed to in writing. No additional charges of any kind (including but not limited to charges for boxing or other containerization, cartage, insurance or transportation (including premium transportation) will be allowed unless authorized by Lexmark in writing. Absent any written agreement stating otherwise, no action may be taken against Lexmark for the payment of duties and miscellaneous taxes owed by Supplier according to any legislation in effect.

**ARTICLE 8: INVOICING; PAYMENT**

Invoices shall: (a) contain this Order number; (b) shall be addressed by the Supplier to Lexmark's address as indicated on the Order and (c) shall be submitted no later than thirty (30) days after delivery of the Goods/Services ("Accurate Invoice"). Failure to comply with the preceding sentence will result in rejection of the invoice by Lexmark. Supplier shall not invoice until the Goods/Services have been delivered, and Lexmark reserves the right to reject any invoice received prior to the Delivery Date.

Lexmark shall pay Supplier in accordance with the terms/rates set forth in this Order, and payment for an Accurate Invoice shall be made on a release of funds basis net sixty (60) days after Lexmark's receipt of the Accurate Invoice. Lexmark will notify Supplier of any dispute related to an invoice prior to the invoice due date.

Lexmark reserves the right to set off any amount owed to Supplier under this Order against any monies owed to Lexmark under this Order or a different transaction.

**ARTICLE 9: 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 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 10: CONFIDENTIALITY** Supplier shall consider all information furnished by Lexmark under this Order to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Supplier obtains written permission from Lexmark do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Supplier for Lexmark in connection with this Order.

**ARTICLE 11: TERMINATION**

This Order may be terminated in whole or in part by Lexmark for any reason or no reason at any time upon written notice to Supplier. Upon receipt of such notice, Supplier shall stop work immediately and terminate all orders to the extent that they relate to the terminated work. If Lexmark terminates this Order for any reason, Supplier's sole and exclusive remedy is payment for the Goods/Services received and accepted by Lexmark prior to the termination date. In no event shall Lexmark be liable to Supplier for cost of material, labor or loss of any anticipated profit.

**ARTICLE 12: WARRANTIES**

Supplier expressly warrants that for a period of twelve (12) months from the Delivery Date, all Goods/Services shall: (a) be new and free from any defects in workmanship, material and design; (b) conform to this Order and any applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. Supplier further warrants that it shall comply with all anti-corruption and anti-bribery laws applicable in the country(ies) in which the Good/Services are delivered, performed and/or otherwise provided to Lexmark under this Order. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Lexmark's discovery of the noncompliance.

If the delivered Goods are defective, or if they do not comply with this Order and any related

product specifications, Lexmark, without limiting its rights or remedies available at law or equity, is entitled to: (i) require the delivery of Goods complying with this Order or related specifications, at Supplier's risk and expense (and Lexmark shall return the defective Goods to Supplier at Supplier's expense); or (ii) require a reduction of the purchase price; or (iii) terminate this Order immediately in whole or in part without liability to Supplier; or (iv) in the case of Services, upon Lexmark's request re-perform the Services at Supplier's sole expense.

**ARTICLE 13: LIMITATION OF LIABILITY EXCLUDING SUPPLIER'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREIN, NEITHER LEXMARK NOR SUPPLIER SHALL BE LIABLE TO EACH OTHER FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE TYPE OF DAMAGES AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LEXMARK'S TOTAL AGGREGATE LIABILITY TO SUPPLIER EXCEED THE TOTAL AMOUNT OF THIS ORDER.**

Notwithstanding anything to the contrary herein, Supplier shall be liable for any loss or damage incurred by Lexmark or a third party during the performance of this Order to Lexmark's movable and immovable property and to Lexmark's employees, including but not limited to property damage, death, or personal injury.

**ARTICLE 14: INDEMNIFICATION**

Supplier shall indemnify, hold harmless, and defend Lexmark, its affiliates, officers, directors, agents, subcontractors, consultants and employees from any and all actual and/or alleged liabilities, fines, claims, losses, damages and/or costs (including but not limited to attorney's fees) arising out of or in connection with the Goods/Services or this Order (each a "Claim") that: (a) the Goods/Services infringe any trademark, trade secret, copyright, patent or any other intellectual property right of any third party; and (b) is caused directly or indirectly by the acts or omissions of Supplier under this Order.

**ARTICLE 15: INSURANCE**

Supplier shall maintain a third party liability insurance policy providing for terms and conditions customary in the industry, including at a minimum: public liability, product liability and completed operations (minimum liability limit: THB fifteen million (15 000 000) per loss event) a Property insurance policy covering finished products, Employer's Liability (including Worker's Compensation coverage where required by law). Such insurance shall be primary insurance and shall not limit Supplier's liability under this Order or otherwise. Supplier shall furnish proof of appropriate insurance coverage at Lexmark's request. Any lower liability limits shall be subject to Lexmark's prior written consent.

**ARTICLE 16: ASSIGNMENT**

Supplier may not assign, transfer, delegate or subcontract this Order to a third party, and any such attempted assignment or transfer shall be void and of no effect.

**ARTICLE 17: PUBLICITY**

Supplier shall not use the existence of this Order, Lexmark's name, mark or any derivative thereof, or Lexmark's status as a customer of Supplier in any promotional activity or on its website or otherwise in any public communications without the express written approval of Lexmark's executive management and Lexmark's Corporate Communications Department which must be obtained for each instance of Supplier's use thereof.

**ARTICLE 18: GENERAL PROVISIONS**

a) This Order and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of Thailand, excluding any choice of law provisions that may apply. The parties agree the UN Convention on Contracts for the International Sale of Goods shall not apply to this Order.

b) Supplier warrants and represents to Lexmark that it is in compliance with and shall remain in compliance during performance of this Order and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with all applicable laws,

regulations and ordinances. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. All Personnel shall be qualified to perform the Services pursuant to the highest industry standards. Supplier shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Supplier assumes all responsibility for shipments of Goods requiring any government import and export clearance. If Supplier fails to comply with the laws, orders, rules, ordinances and regulations and as a result Lexmark is fined, Supplier agrees to pay the fine and costs and expenses incident thereto or reimburse Lexmark for payment. To the extent that Supplier's Personnel are required to enter onto Lexmark's site or property, Supplier shall ensure that Personnel comply with Lexmark's policies, including but not limited to applicable health, safety and environmental policies and standards.

c) Supplier shall not make or offer gifts or gratuities of any type to Lexmark employees, contractors or members of their families. Supplier and Lexmark are independent contractors and not the employees or agents of the other party.

d) Except as otherwise provided herein, no waiver of any of the terms of this Order shall be effective unless in writing and signed by the waiving party. Failure by either party to insist in any instance on strict conformance by the other party to any term of this Order shall not be construed as a waiver of that or any other term contained in this Order. Failure by either party to act in the event of a breach shall not be construed as consent to or a waiver of any subsequent breach of the same or of any other term contained in this Order.

e) All notices hereunder shall be in writing via certified mail, return receipt requested, and shall be deemed to have been duly given (i) five (5) days after sending, if sent by domestic mail; (ii) seven (7) days after sending, if sent by international mail; or (iii) two (2) days after deposit with a recognized courier with next-day delivery instructions, a) if to Supplier, to the

address on the front page of this Order, b) if to Lexmark, to:

Lexmark International (Thailand) Co., Ltd.

Attn: Global Sourcing Manager

Unit A, 5th Floor, Room S5055, 496-502 Gaysorn Amarin Building, Ploenchit Road, Lumpini, Pathumwan Bangkok 10330, Thailand

f) Except as otherwise expressly stated herein, all remedies available to a party shall be cumulative, and the specification of a remedy shall not preclude the party from pursuing other remedies available at law, equity or otherwise. Nothing in this Order shall prevent a party from seeking immediate injunctive relief against the other party in a valid court of law or equity. Neither party shall be liable by reason of any failure of performance hereunder if such failure arises out of causes beyond its reasonable control, despite its reasonable efforts and without its fault or negligence. If the failure of Supplier to perform under this Order is excused under this Article 18(f) for more than five (5) days, Lexmark may terminate this Order upon written notice without liability to Supplier.