

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF AMCOR SPECIALITY CARTONS PHILIPPINES

1. The following General Terms and Conditions shall apply to all sales and deliveries of goods made by the Seller to the Buyer. All orders by the Buyer shall be made subject exclusively to these General Terms and Conditions (and those Special Terms set out on the front page of the Order Confirmation) which shall together exclude and override all other oral or written representations, terms and conditions inconsistent with them which the Buyer might seek to impose. This shall apply regardless of whether such other representations, terms or conditions might be submitted in or with a later document or communication and/or purport to exclude or supersede any representations, terms or conditions inconsistent with them. Amendments to these General Terms and Conditions or to those Special Terms set out on the front page of the Order Confirmation may only be made by an agreement in writing with the Seller (and in the absence of the same shall be invalid). If any provision of these General Terms and Conditions is or shall become void in whole or in part the other provisions of these General Terms and Conditions shall remain fully valid and enforceable and the void provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these General Terms and Conditions.
2. Any price information or quotations submitted by the Seller with respect to the sale and delivery of goods shall be for information only and shall not constitute a firm offer. Orders shall only be binding when the Seller shall have sent the Buyer an Order Confirmation in writing. The Seller's employees or salesmen are not authorised to make any representation or promise on the Seller's behalf except when this shall be expressly stipulated on the front page of the Order Confirmation. If the Buyer shall make any amendments or additions to the order placed with the Seller, the Seller shall be entitled to reject such amendments or additions or to cancel the whole order. Prices are exclusive of any sales or other taxes.
3. The Seller shall not be liable for any loss or damage whatsoever and howsoever caused arising in connection with any delay in the delivery.
4. If the Seller shall fail to fulfil its obligations under the agreement or if it shall be hampered in the same due to Force Majeure, any liability towards the Buyer shall be excluded and the Seller shall reserve the right to withdraw from the agreement in whole or in part, or to postpone the delivery date for a reasonable period. For the purposes of these General Terms and Conditions, "Force Majeure" shall mean circumstances for which the Seller shall not be responsible and which it cannot influence including, but not limited to, labour disputes, blockades, political unrest, civil commotion, riot, war, accidents, natural disasters, explosions, fires, damage by water, gales, climatic conditions or environmental contamination, operating breakdowns, delays by suppliers, shortage of labour, restricted supply of electrical power or materials and official directives. If the Seller shall terminate the agreement by reason of this Condition, the Seller shall refund any payment which the Buyer shall have already made with respect to the delivery (minus any amount possibly due to the Seller from the Buyer). At the same time the Seller shall not be liable to compensate the Buyer for any further loss or damage which the latter shall suffer as a result of the termination or the lack of deliveries through this.
- 5.1 Payment shall be due in accordance with the terms of payment stated overleaf (or, if none, upon delivery) and shall be deemed to fall due if sooner upon the happening of any of the events specified in Condition 12.
- 5.2 The Seller shall be entitled to charge interest at a rate of 8 per cent per annum (or, if less, the applicable legal rate) on:
 - (i) all overdue payments
 - (ii) the price of any goods of which the Buyer shall have failed to take delivery until the date it is actually delivered to the Buyer or otherwise disposed of.
- 5.3 Time of payment shall be the essence of the Contract.
- 5.4 The Buyer shall not be entitled for any reason whatsoever to withhold or set-off payment for goods delivered.
- 6.1 The risk in the goods shall pass to the Buyer when the Seller delivers the goods in accordance with the terms hereof to the Buyer or any other person to whom the Seller has been authorised by the Buyer to deliver the goods whether expressly or by implication; thereafter the Seller shall not be liable for the safety of the goods and the Buyer should therefore insure the goods.
- 6.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these General Terms and Conditions, property in the goods shall not pass to the buyer until the Seller has received cleared funds payment in full of the price of the goods and all other goods and services sold and/or agreed to be sold by the Seller to the Buyer for which payment is then due
- 6.3 Until such time as the goods are paid for the Buyer shall keep the goods in such manner as they are readily identifiable and the Seller may at any time require delivery of the goods up to him or to his order for which purpose he may enter the Buyer's premises to recover the goods.
- 7.1 The goods shall comply with the specifications set out overleaf (or as otherwise agreed in writing between the parties), all other warranties, express or implied, are excluded. The Seller will, to the best of its abilities, advise the Buyer with respect to the choice of packaging for the Buyer's product and, on request, supply material for testing purposes. The Buyer shall, however, be responsible for the testing and choice of packaging in so far as nothing to the contrary shall be agreed in writing.
- 7.2 The properties and values of the packaging lie within a certain tolerance range. In consequence, no representation, warranty or condition is given that goods supplied will be completely identical to, or correspond with, any sample or test material that may have been supplied. The packaging shall be deemed to have been delivered in accordance with the specifications set out on the front page of the Order Confirmation if its values shall be within the tolerance range usual in the trade or if it shall correspond to any special quality specifications that may be agreed in writing. In particular the Seller reserves the right to deliver within the following tolerance ranges: quantity: +/- 10% (however, variations of +/- 100 kg shall always be permitted); thickness of material: +/- 8.5%; print in conformity with the standard usual in the trade. Minor deviations from the approved colour or print proofs will not entitle the Buyer to a price reduction or to refuse acceptance.
8. The Buyer shall observe the storage conditions for the packaging specified by the Seller in every respect. The Buyer shall be obliged, before using the packaging, to carry out the appropriate testing of the packaging under realistic production conditions. It shall suspend its use of the packaging immediately if the packaging shall be found to be unsatisfactory.

- 9.1 Apart from in the circumstances referred to in Conditions 9.2 and 9.4, the Seller shall not be liable in any way to the Buyer for any loss or damage incurred or suffered by it directly or indirectly out of or in connection with the sale and delivery, regardless of the cause of the same. In any event, if the Seller is determined to be liable under law for any loss or damage, such loss or damage shall not exceed the price paid by the Buyer for the relevant goods.
- 9.2 In the event that delivery shall fail to comply with the specifications set out on the front page of the Order Confirmation, within the tolerances set out in Condition 7.2, the Seller shall replace the delivery concerned by a new one. The Seller may instead, also at its own option, refund the purchase price (in so far as the same shall have been paid). The Seller's liability pursuant to this Condition shall lapse if the Seller shall not have received notice of the defect or deficiency concerned in the delivery within thirty days of discovery and six months of their receipt by the Buyer and, where appropriate in an individual case, if the carrier of the goods shall not have received any notice in this respect within any time period stipulated by the carrier for the notification of claims.
- 9.3 Except as provided under Condition 9.4 below, the Seller shall never be liable to the Buyer for any loss of profit, loss of turnover, loss of goodwill, or any other indirect, financial or consequential loss or damage of any kind, regardless of how such losses or damage may have occurred. The Buyer shall indemnify the Seller and hold it harmless with respect to all damage, costs, claims, expenses and liabilities whatsoever which shall concern the Seller and shall arise directly or indirectly in connection with deliveries made by the Buyer to third parties, or any use (whether by the Buyer or any other person) of the goods.
- 9.4 Nothing in these Conditions shall limit or exclude the liability of the Seller in respect of loss or damage sustained by the Buyer arising out of death or personal injury caused by misdemeanours on the part of the Seller or that which is mandatory under applicable law.
10. Save for the provisions contained by Condition 7.2 and save for any fraudulent misrepresentation, the Seller hereby excludes liability for any both express and tacit declaration, warranty and condition with respect to its deliveries (including but not limited to the quality, suitability or fitness of the delivery for every special purpose - regardless of whether the seller shall have known of the same - or its compliance with a sample or a description). This shall apply regardless of how the same shall have been made or come about. The sole basis for the Buyer's claim shall be Condition 9 of these General Terms and Conditions applicable for breach of contract. In this connection in particular, the Buyer acknowledges that catalogues, technical descriptions, price lists or any other product literature prepared by the Seller shall not be regarded as representations, warranties or conditions relating to the delivery.
- 11.1 Copyright and all other intellectual property rights to artwork and design which shall be supplied by the Buyer for the purpose of use on the goods to be supplied by the Seller, shall remain the Buyer's property. The Buyer shall indemnify the Seller with respect to all damages, costs, claims, expenses and liabilities whatsoever arising from or in connection with their use by the Seller as a consequence of an infringement or alleged infringement of intellectual or commercial property rights of third parties anywhere in the world and shall hold it completely harmless with respect to such claims.
- 11.2 Copyright and all other intellectual property rights of whatever nature in materials prepared or produced for the purposes of the application of artwork and designs supplied by the Buyer to goods to be supplied by the Seller, such as drawings, printing blocks, photographic work, films and engraved printing rollers shall remain the sole property of the Seller. This shall apply regardless of whether such materials have been the subject of separate invoice. The Seller shall keep the said materials for a period of 12 months after production of the last order for which they have been used.
- 11.3 These General Terms and Conditions shall not prevent the Seller from using any know-how, skills or techniques which it acquires during its discharge of its obligations to supply goods for other purposes.
12. If bankruptcy proceedings, or judicial or extrajudicial probate proceedings shall be opened over the Buyer, or a receiver in bankruptcy or receiver in composition or similar shall be appointed with respect to all or any of the Buyer's assets, or if a levy of distress on such assets shall be executed or applied for, or the Buyer shall wish to make or shall implement any composition or some other arrangement with its creditors, or shall undertake a similar action on account of debts, or the same shall be imposed on it, or it shall be subject to similar actions under foreign law, or an action shall be filed against it, or it shall have infringed its obligations towards the Seller to a considerable extent, the Seller shall be entitled (without prejudice to any other rights it may have) to suspend delivery of goods ordered by the Buyer and/or (at the Seller's option) to terminate the agreement.
13. The Seller reserves the unilateral right at any time prior to payment for the delivery by the Buyer to adjust the price set out on the front page of the Order Confirmation accordingly in the case of any currency fluctuations or of any significant increase in the cost of raw materials. This provision shall take precedence over that of Condition 2 of these General Terms and Conditions.
14. All disputes arising out of these terms or out of agreements to which these General Terms and Conditions shall apply or which shall be connected with the same, shall be adjudged exclusively in accordance with the laws of The Philippines. The parties also submit to the exclusive jurisdiction of the courts in The Philippines. The Convention on Contracts for the International Sale of Goods shall not apply.