

# General Terms and Conditions of Sale

## AMERICORP INTERNATIONAL LTD

**These General Terms and Conditions of Sale define the terms and conditions under which the companies of the AMERICORP INTERNATIONAL LTD (hereinafter "Americorp") sell Products and/or invoice services provided to their Customers.**

### **Article 1 - Definitions**

For the purposes of these General Conditions and the agreements to which they apply:

- The term "Americorp" refers to any company of the Americorp international ltd that invoices the provision of services or the sale of Products to the Customer.
- The term "Order" means any order accepted by Americorp as evidenced by Americorp's written confirmation of the Order, thereby thus certifying the Customer's acceptance of these General Terms and Conditions (e.g. pro forma invoice).
- The term "Customer" means any person or entity that places an Order for Products and/or services with Americorp.
- The term "Product" refers to any Product supplied by Americorp to the Customer.
- Any time period indicated in these GTC must be interpreted in calendar days.

### **Article 2 - Purpose and scope of application**

2.1 Any Order of Products implies the Customer's full and unreserved acceptance of these General Terms and Conditions of Sale, which shall prevail over any other document of the Customer, and in particular over any general terms and conditions of purchase, unless expressly agreed otherwise in advance by Americorp.

2.2 These General Terms and Conditions of Sale apply to all sales of Products by Americorp, unless a specific agreement or special conditions are agreed upon in writing between Americorp and the Customer prior to the Order.

2.3 Any document other than these General Terms and Conditions of Sale, in particular catalogues, leaflets, advertisements and notices, are only informative and indicative, not contractual.

## **Article 3 - Intellectual property**

All technical documents provided to the Customers remain the exclusive property of Americorp and/or its suppliers, which are the sole holders of the intellectual property rights on these documents, and must be returned to Americorp upon request. Americorp's customers undertake not to make any use of these documents that may infringe the industrial or intellectual property rights of Americorp and/or its suppliers and undertake not to disclose them to any third party.

## **Article 4 - Orders**

### 4.1 Placing of Orders

- 4.1.1 The Order is defined in Article 1 hereof.
- 4.1.2 Any order placed by the Customer, by any means whatsoever, shall be deemed to have been accepted 48 (forty-eight) hours after receipt of the written Order confirmation issued by Americorp.
- 4.1.3 Where the terms of payment provide for the payment of a downpayment, the Order shall only be deemed to have been accepted upon receipt of that downpayment, at the latest within 7 (seven) days following the Order or any other period explicitly indicated on the Order. Americorp reserves the right to cancel the Order if the down-payment is not received within the said time period.
- 4.1.4 Where the fulfilment of an Order requires the Customer to provide an import licence or equivalent document, Americorp reserves the right to cancel the Order if the necessary document(s) is (are) not provided within 7 (seven) days of the Customer's receipt of the written Order confirmation.
- 4.1.5 Americorp shall not be liable for any shortcomings, errors or other faults vitiating the Customer's declarations when an Order is placed or executed, particularly as regards quantities, grades, choice of Incoterm, packaging, customs codes, etc.

### 4.2 Modification

- 4.2.1 Orders transmitted to Americorp are irrevocable, unless Americorp gives its written consent.
- 4.2.2 Any request by a Customer to modify an Order shall be subject to written confirmation by Americorp; failing which, the Order shall be executed under the initial terms. If the Customer modifies the Order, Americorp shall be released from the deadlines initially agreed for its execution.
- 4.2.3 The Customer shall not transfer the benefit of the rights and obligations arising from an Order to a third party unless the said third party has accepted the terms of these General Terms and Conditions and obtained Americorp's express consent.

### 4.3 Quantities

The quantities indicated on the Order shall be considered approximate; Americorp therefore reserves the right, given the difficulty of adjusting weights, particularly in the case of bulk deliveries, to deliver a quantity that may differ by up to 10% more or less from that specified on the Order. The quantities invoiced shall be those shown on Americorp's weight sheet and/or those indicated on the shipping or transport documents.

## **Article 5 - Deliveries**

### 5.1 Delivery times

- 5.1.1 The delivery times indicated by Americorp in the Order are only given as an indication. Americorp shall endeavour to abide by them. However, they depend on the availability of the Products at the manufacturer's, the logistical lead times used in the industry and the lead times related to the intervention of each of the service providers in the logistics chain. Americorp undertakes to execute the Orders, except in the event of force majeure or circumstances beyond its control, as defined in Article 10 hereof.
- 5.1.2 In the event of a delay in the receipt of the Products due to the Customer, Americorp shall be entitled to invoice the Customer for all costs relating to additional storage and transport as well as any other additional costs relating to this delay, including, in particular, demurrage fees, without the Customer being able to object to this.
- 5.1.3 Any delay in relation to the indicative delivery times initially planned shall not justify cancellation of the Order placed by the Customer or any compensation payable by Americorp.

### 5.2 Risks

The transfer of risks on the Products shall be carried out in accordance with the INCOTERM indicated in the Order. Regardless of the applicable risk transfer procedures, Americorp's choice of carrier shall in no way entail its liability for destruction, damage, loss or theft during the transport.

### 5.3 Transport

It is the Customer's responsibility, in the event of damage to the Products delivered and/or shortages, to notify all necessary reservations to the carrier and to inform Americorp of these reservations, by e-mail with Americorp's acknowledgement of receipt or by any other means enabling the Customer to prove good receipt of these reservations, in accordance with the rules in force, in particular those specified in Article 9.2.1 hereof, and at the latest within 5 (five) days of receipt of the Products. In the absence of the notifications provided for in this Article and in Article 9.2.1, the Product shall be considered to have been accepted without reservation by the Customer.

### 5.4 Receipt

- 5.4.1 Without prejudice to the provisions of Article 5.3, in the event of apparent defects or shortages, any complaint, of whatever nature, concerning the Products delivered,

must be made in accordance with the conditions of Article 9 below.

- 5.4.2 Any complaint made by the Customer under the conditions and in accordance with the procedures described in Article 9 shall not suspend the Customer's payment for the Products concerned when due.
- 5.5 Customer's creditworthiness

Americorp accepts Orders in consideration of the Customer's solvency and in particular of the financial guarantees provided by the Customer. If Americorp has objective reasons to fear payment difficulties on the part of the Customer on the date as per the Order or afterwards, or if at any time the Customer presents lesser guarantees than those presented when the Order was placed, Americorp may make acceptance of the Order or its continued performance subject to cash payment or to the Customer providing guarantees to Americorp. In this case, Americorp shall also have the right, prior to the acceptance of any Order, as well as during its execution, to require the Customer to provide accounting documents, and in particular profit and loss accounts, even if they are provisional ones, enabling Americorp to assess the Customer's solvency. In the event that the Customer refuses to pay in cash, without any sufficient guarantee being proposed by the latter, Americorp may refuse to honor the Order(s) placed and to deliver the Product concerned, without the Customer being able to claim an unjustified refusal to sell, or to claim any compensation whatsoever.

#### 5.6 Refusal of an Order

In the event that a Customer places an Order with Americorp without having paid the outstanding invoices, Americorp may refuse to honor the Order and deliver the Product concerned without the Customer being able to claim any compensation whatsoever, for whatever reason.

#### 5.7 Laws and regulations

The Customer is responsible for complying with the laws and regulations in force relating to the import and use of the Products in their country of destination, including, but not limited to, ensuring conformity of customs code declarations, payment of customs duties, etc.

### **Article 6 - Prices**

6.1 The prices are fixed by agreement between Americorp and the Customer on the day of the Order. They shall always be exclusive of tax, in accordance with the INCOTERM referred to in the Order. Unless expressly stipulated otherwise, prices may exceptionally be changed as a result of significant changes in the terms of Americorp's contracts with its own suppliers or carriers between the time the order is placed and its written confirmation by Americorp or between the time the order is placed and the time it is shipped by Americorp.

6.2 Americorp shall not be bound by any penalty clauses appearing on its Customers' commercial documents.

### **Article 7 - Terms of payment**

## 7.1 Payment

- 7.1.1 The payment terms are agreed upon in the Order.
- 7.1.2 All costs related to the payment of invoices shall be borne by the Customer.
- 7.1.3 Early payment shall not give rise to any discount. Only the actual receipt of the price shall be considered as full payment within the meaning of these General Terms and Conditions of Sale.

## 7.2 Non-payment

- 7.2.1 In the event of non-payment at a due date and subject to
- Article 8.4 hereof, all sums owed to Americorp by the Customer in respect of the same Order or any other Orders shall become immediately due and payable, without prior formal notice.
- 7.2.2 Any sum not paid on the due date shall give rise to the payment by the Customer of penalties set at 3 times the legal interest rate in force in the country where the invoice was issued, on the due date indicated on the said invoice, with a minimum of one percent per month. These penalties shall be automatically payable, upon receipt of the notice informing the Customer that they have been charged to it.
- 7.2.3 In addition, Americorp reserves the right to bring an action before the competent court to put an end to this nonperformance, subject to a daily penalty for each day of delay.

## **Article 8 - Retention of title**

8.1 Notwithstanding the INCOTERM used for each transaction, the transfer of ownership of the Products sold by Americorp is suspended until full payment of the corresponding price by the Customer, in principal and accessories, even in the event of extended payment deadlines being granted. Any clause to the contrary, particularly in the general terms and conditions of purchase, shall be deemed unwritten.

8.2 By express agreement, Americorp may exercise its rights under this retention of title clause, for any of its claims, on all the Products in the Customer's possession, the latter being conventionally presumed to be those which have not been paid for, and Americorp may take them back or claim them as compensation for all its unpaid invoices, without prejudice to its right to rescind the sales in progress. Similarly, Americorp may unilaterally, without prior notice, draw up or have drawn up an inventory of the Products in the possession of the Customer, which undertakes to allow free access to its warehouses, shops or other premises, ensuring that identification of Americorp's Products is always possible. The Customer also undertakes to allow Americorp to recover the Products after a joint inventory if Americorp intends to exercise its right of ownership over the Products.

8.3 The Customer may not, under any circumstances, re-sell, and pledge or grant a security interest on its stocks of Products that have not been paid for.

8.4. In the event of non-payment, in whole or in part, of an overdue invoice or non-payment of a down-payment on an Order, and unless Americorp prefers to request full performance of the sale, Americorp reserves the right to terminate the sale without prior notice and to reclaim the Product, all costs or losses related to the termination (and in particular demurrage fees, return costs, negative price variations) shall be borne by the Customer, with any payments made being retained by Americorp under the penalty clause.

8.5 In the event of receivership or liquidation of the Customer's assets, Americorp reserves the right to cancel the Orders in progress and/or, in agreement with the Customer, to modify the terms of payment for its Orders. Americorp also reserves the right to claim ownership of the Products in stock.

8.6 Once the Products have been delivered, the Customer shall be considered as the custodian of the Products.

## **Article 9 - Liability – Guarantees against defects**

### 9.1 Limitation and exclusion of liability

- 9.1.1 Americorp's liability for each Order shall not in any event exceed the price of the Products as shown on the final invoice, and the Customer waives any recourse above this amount. In particular, the Customer waives all claims for direct and indirect damages, including operating losses. In any event, Americorp cannot be held responsible for the level and management of its Customers' stocks of Products.
- 9.1.2 Defects and deterioration of the Products delivered as a result of abnormal storage and/or conservation conditions on the Customer's premises, in particular in the event of outdoor storage or an accident of any kind whatsoever, shall not give rise to the implementation of Americorp's guarantee.

### 9.2 Guarantees for apparent and hidden defects

#### 9.2.1 Definitions

- 9.2.1.1 An apparent defect is defined as a lack of conformity of the Product with the sales specifications provided by the manufacturer of the Products or a missing quantity detectable at the time of delivery.
- 9.2.1.2 As Americorp's Customers are professionals, a hidden defect is defined as a lack of conformity of the Product with the sales specifications provided by the manufacturer of the Products that could not be detected by the Customer before testing the Product.

#### 9.2.2 Complaint procedure

- 9.2.2.1 Upon delivery, the Customer must check the Products and take samples under seal in order to have the said samples tested by a laboratory of international repute in the event of discussions on the conformity of the Products. Failing this, Americorp reserves the right to reject any discussion on the benefit of the Product guarantee.

- 9.2.2.2 In addition, any claim, reservation or dispute relating to shortages and/or apparent and/or hidden defects must be made under the cumulative conditions set out below:
- The complaint of defects existing at the time of delivery, and revealed after receipt of the Products, must be made by the Customer by e-mail with acknowledgement of receipt from Americorp, or any other means enabling the Customer to prove proper receipt of the complaint, within 5 ( five) days of delivery of the Products. It is expressly agreed that after the expiry of this period, the Products shall be deemed to have been received without reservation and the Customer will not be able to invoke any shortages and/or apparent defects and/or hidden defects affecting the Products, nor may the Customer invoke these as a counterclaim to refuse to pay the price of the Products.
- The Customer must have the reality of the defects observed by an independent expert within 8 (eight) days of receipt of the Products, Americorp reserving the right to proceed, directly or indirectly, with any observation and verification on site. If these conditions are not met, Americorp's liability towards the Customer for a shortage and/or apparent defect and/or hidden defect cannot be called into question.

### 9.2.3 Guarantee for defects

- 9.2.3.1 In the event of missing and/or defective Products, whether involving an apparent or hidden defect, Americorp shall only be obliged to send the missing and/or defective quantity to the Customer, free of charge, unless it prefers to reimburse the Customer for these quantities, without the Customer being able to claim damages for any reason whatsoever. Americorp may also decide to take back or have the defective Products taken back.
- 9.2.3.2 Americorp's guarantee for missing Products and/or apparent and/or hidden defects shall only apply to missing and/or defective Products actually invoiced by Americorp to the Customer.
- 9.2.3.3. The guarantee is excluded if the delivered Products have been used or if the Products have been mixed, processed or modified.
- 9.2.3.4 Americorp gives no other guarantee, either express or implied, regarding the Products and shall bear no liability in relation to the suitability of the Product for its end use.

## **Article 10 - Force majeure**

Events beyond the control of the parties, which they could not reasonably be expected to foresee, and which they could not reasonably avoid or overcome, shall be considered as force majeure or fortuitous events, insofar as their occurrence renders the performance of the obligations totally impossible. In particular, the following are considered to be cases of force majeure or fortuitous events that relieve Americorp of its obligation to deliver within the timeframe initially planned: any disruption of supply for a reason not attributable to Americorp, any cause of disruption of supply attributable to its suppliers or service providers, production stoppages due to unforeseen breakdowns, shortages, natural disasters, cyclones, flooding, fire, heavy thaw, any disruption of energy supply, roadblocks, blockades, war, riots, coups d'état, governmental actions, industrial actions, strikes of all or part of

Americorp's personnel or its regular carriers, acts of terrorism, epidemics, pandemics, as well as any other event beyond Americorp's reasonable control. In such circumstances, Americorp shall notify the Customer as soon as possible following the occurrence of the event(s), by e-mail with acknowledgement of receipt or any other means enabling Americorp to prove receipt of the notification; the contract binding Americorp and the Customer shall then be automatically suspended without compensation, as from the date of occurrence of the event. If the event lasts more than 30 (thirty) days from the date it occurred, after reasonable commercial efforts, the sales contract between Americorp and its Customer may be terminated by Americorp, without the Customer being entitled to claim damages. If the event renders the performance of the Order impossible then, at Americorp's discretion, the contract between Americorp and the Customer may be automatically terminated and without compensation as from the date the event occurred.

## **Article 11 - Applicable law and jurisdiction**

11.1 The General Conditions are governed and interpreted in accordance with U.S. law. Any question relating to these General Terms and Conditions of Sale and to the sales they govern, which is not covered by these contractual stipulations, shall be governed by U.S. law, to the exclusion of any other law and, in a suppletive capacity, by the Vienna Convention on the International Sale of Goods.

11.2 In the event of disputes between Americorp and the Customer arising from or relating to these General Terms and Conditions and to the sales contracts, the parties shall attempt to resolve their Disagreement by negotiation within a period of 30 (thirty) days. In the absence of an amicable agreement, the dispute shall be submitted to the exclusive jurisdiction of the Commercial Court of Texas (USA), even in the event of a claim under guarantee or of multiple defendants. Bills of exchange are no exception to this jurisdiction clause.

11.3 The attribution of jurisdiction is general and applies whether it concerns a main claim, an incidental claim, an action on the merits or a summary hearing.

11.4 In addition, in the event of legal action or any other action by Americorp to collect debts, the costs of summons, court costs, as well as lawyer's and bailiff's fees, and all ancillary costs shall be borne by the Customer, as well as costs related to or arising from the Customer's failure to comply with the terms of payment or delivery of the relevant Order.

## **Article 12 - Interpretation – Construction**

If one of the clauses of the General Terms and Conditions is declared null and void by a final court decision, the nullity of the said clause shall not entail the nullity of the General Terms and Conditions of Sale and all the other provisions shall remain in force. The invalidated clause shall be replaced by mutual agreement by another clause that achieves the same legal and economic result.

## **Article 13 - Waiver**



Failure to exercise or only partial exercise of a right provided for in these general terms and conditions for the benefit of Americorp shall not constitute a waiver of the subsequent exercise of this right in full or for the unexercised part.

#### **Article 14 – Confidentiality**

The Customer undertakes not to disclose the conditions of each sale of Products by Americorp to any third party. This confidentiality clause shall apply to all transactions conducted with Americorp.

#### **Article 15 - Anti-corruption, export control legislation and international sanctions**

15.1 The Customer shall ensure that, as at the date of the Order, its officers, employees, agents, suppliers, subcontractors and any other persons providing services for or on behalf of the Customer comply with all applicable laws, articles of association, regulations and codes applicable to anti-corruption and anti-money laundering including the US Foreign Corrupt Practices Act 1977, the French Sapin II Act 2016- 1691, the UK Bribery Act 2010 and the South African Prevention and Suppression of Corruption Act No. 12 2004. In particular, the Customer undertakes and warrants that at the date of the Order, its officers, employees, agents, suppliers, subcontractors and any other person providing services for or on behalf of the Customer shall not offer, promise to offer, accept, solicit and/or authorise any improper advantage of any kind in connection with the conclusion of the Order. The Customer also undertakes to take reasonable steps to prevent such acts.

15.2 The Customer undertakes and warrants that at the date of the Order, its officers, employees, agents, suppliers, subcontractors and any other person providing services for or on behalf of the Customer shall perform the Order in compliance with the applicable export control laws or regulations and international economic sanctions. The Customer shall not be required to perform any obligation under the Order if it does not comply with, violates, is inconsistent with, or exposes it or Americorp to punitive measures under the laws and regulations applicable to the Parties as regards export control and/or international economic sanctions. In which case, the Customer shall, as soon as possible, notify Americorp in writing of its inability to perform.

15.3 Without prejudice to all other rights or remedies that may exist hereunder or under the law, Americorp reserves the right to either (i) suspend or (ii) terminate any outstanding Order immediately upon written notice to the Customer and at any time if, in its reasonable judgment, the Customer is in breach of this clause.

#### **Article 16 – Language**

These terms and conditions are drawn up in the English, French and Spanish languages. In the event of a contradiction between these three versions, only the English language version shall be applicable.

## **Article 17 - Processing of personal data**

The Customer is informed that Americorp collects and processes professional and personal data for use by Americorp, its employees, its affiliates and its subcontractors for the purpose of managing Orders, monitoring the Customer relationship, including compliance with the regulations referred to in

Article 15, and carrying out business prospection operations. The data will be kept for the duration of the Contractual relationship and then archived for 5 (five) years. In accordance with the regulations in force concerning the protection of personal data, the Customer may exercise its rights of opposition, access, rectification, limitation, deletion and portability by sending its requests to the following address: Americorp International LTD - 11824 Jollyville RD Suite 303 – Austin, TX, 78759 USA or to the e-mail address: legal@americorp.info If the Customer considers, after having contacted Americorp, that its personal data protection rights are not being respected, it may lodge a complaint to the American authority "US federal trade commission" (FTC)

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