



Foot Locker

General Terms and Conditions of Purchase

Scope

These General Terms and Conditions of Purchase ("GTCP") govern the pre-contractual and contractual relationship between Foot Locker Europe B.V. including its subsidiaries ("FLE") and its supplier ("Vendor").

1. Applicable conditions

- 1.1 The relevant purchase order, letter of instruction or any other instruction issued by FLE ("Order"), sets forth the terms under which FLE purchases goods ("Goods") and/or services ("Services") (together referred to as "Supply") from Vendor. Orders must be signed by a FLE authorized representative. These GTCP are applicable to Orders issued by FLE and together form a binding contract (the "Agreement").
- 1.2 An Agreement is also formed when Vendor accepts FLE's Order by delivery of Goods and/or commencement of performance of any Services.
- 1.3 The Agreement can be varied only in writing signed by a FLE authorized representative. FLE does not agree to any proposed amendment, alteration or addition by Vendor. Any other statement or writing of Vendor shall not alter or otherwise affect the Agreement.
- 1.4 FLE is not bound by and hereby expressly rejects Vendor's general conditions of sale/service and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Vendor. Course of performance, course of dealing and usage of trade shall not be applied to modify these GTCP.

2. Conclusion of the Agreement

- 2.1 Where a Vendor is required to return a signed Order, Vendor will have two (2) weeks after receipt of the Order from FLE within which to sign and return the Order. If Vendor fails to accept the Order by written confirmation within the two (2) weeks period, FLE reserves the right to revoke the Order. Where Vendor's written confirmation varies from the original Order, FLE shall only be bound thereby if it agrees to such variation in writing.
- 2.2 FLE shall not return any documentation and samples received in connection with an offer. All costs incurred by Vendor in preparing and submitting any acceptance of FLE's Order shall be for the account of Vendor.
- 2.3 If Vendor makes a start on the performance of the Supply without having received an Order from FLE, Vendor does so at its own expense and risk.

3. Contract Variations

- 3.1 FLE shall be entitled to amend the contents and scope of the Supply. If Vendor is of the opinion that the amendment has an effect on the agreed price or delivery period, FLE shall be informed of this immediately in writing. In the event of additional work, Vendor shall issue:
 - (a) a written quotation with regards to the price and period involved; and
 - (b) a document setting out the impact (if any) this additional work will have on the Supply to be performed by Vendor.
- 3.2 Amendment of the price or delivery period shall be effected on the basis of the unit prices and tariffs set out in an Order, or on the basis of reasonableness and the standards and assumptions on which the Agreement is based.
- 3.3 Vendor shall not perform additional work before FLE has issued written instructions to that effect. Additional work Vendor should have or could have anticipated, or which is considered to be the result of a shortcoming on Vendor's part, shall not be considered additional work and same shall not be payable by FLE.

4. Time of the Essence

- 4.1 Time is of the essence and all dates referred to in the Agreement shall be firm.
- 4.2 In the event that Vendor anticipates any difficulty in complying with any delivery date or any of its other obligations under the Agreement, Vendor shall promptly notify FLE in writing stating the reason(s) for the difficulty, the consequences thereof and Vendor's proposed solution(s).

5. Performance of Supply

- 5.1 Vendor shall perform the Supply with due skill and care, using the proper materials and employing sufficiently qualified staff including for the planning of projects.
- 5.2 Vendor shall be fully liable for the acts and omissions of any and all third parties with which it has contracted in connection with the Supply.
- 5.3 Only written confirmation by FLE shall constitute acceptance of the Supply. If FLE does not accept the Supply, FLE shall promptly notify Vendor of such rejection, and Vendor will, at its own expense, carry out the necessary corrections, additions and modifications reasonably requested by FLE in writing within a reasonably agreed time period.

6. Warranty

- 6.1 Vendor represents and warrants to FLE that the Supply:
 - (a) is suitable for the intended purpose and shall be new, merchantable, of good quality and free from all defects in design, materials, construction and workmanship;
 - (b) strictly comply with the specifications, approved samples, local regulations and all other requirements under the Agreement;
 - (c) is delivered with all required licenses which shall remain valid and in place, and with the scope to properly cover the intended use. Furthermore, all such licenses shall include the right to transfer and the right to grant sublicenses;
 - (d) shall be free from any and all liens and encumbrances;
 - (e) have been designed, manufactured and delivered in compliance with all applicable national, European and any other rules and regulations (including labor laws) Vendor is required to adhere to;
 - (f) complies with the customary norms and standards in the relevant branch of trade or industry; and
 - (g) is provided with and accompanied by all information and instructions necessary for proper and safe use.
- 6.2 These warranties are not exhaustive and shall not be deemed to exclude any warranties set by law, Vendor's standard warranties or other rights or warranties which FLE may be entitled to. These warranties shall survive any delivery, inspection, acceptance, payment or resale and shall extend to FLE.
- 6.3 Without prejudice to any other rights accruing under the Agreement or law, the warranties set forth in Article 6.1 will subsist for a period of twenty four (24) months from the date of acceptance of the Supply by FLE ("Warranty Term"). Supply repaired or replaced within the Warranty Term is warranted for the remainder of the original Warranty Term or twelve (12) months following the acceptance date by FLE of the repair or replacement Supply, whichever period is longer.
- 6.4 If reference is made in the Agreement to technical, safety, quality, environmental or other documents not attached to the Agreement, Vendor shall be deemed to have knowledge of these unless FLE is informed to the contrary in writing at once. FLE shall then provide Vendor with further information on these documents.
- 6.5 Vendor shall, at its own expense, be responsible for obtaining in good time the necessary permissions, permits or licenses required for carrying out the Agreement and for complying with the conditions stipulated therein.
- 6.6 Vendor shall actively ensure that the Supply has as little environmental impact as possible. Supply which may have a negative impact on the environment, for example emissions into the air, water or

- 6.7 soil, must be explicitly made known beforehand to FLE.
- 6.8 Any local taxes and import duties shall be included in Vendor's tender documents.

7. Inspection, Testing and Rejection of Supply

- 7.1 Inspection, testing or payment for the Supply by FLE shall not constitute acceptance. Inspection or acceptance of or payment for the Supply by FLE shall not release Vendor from any of its obligations, representations or warranties under the Agreement.
- 7.2 FLE may, at any time, inspect the Supply and the process for the Supply. If any inspection or test by FLE is made on the premises of Vendor, Vendor shall provide reasonable facilities and assistance for the safety and convenience of FLE's inspection personnel. Vendor shall not derive any rights from the results of such inspection.
- 7.3 If following the inspection FLE concludes that the quality of the Supply does not or according to its expectations will not comply with the Agreement, FLE shall provide Vendor a written notice of rejection.
- 7.4 Upon the immediate receipt of FLE's notice of rejection, Vendor shall be obliged to take at short notice all measures which are necessary to comply with the Agreement in full. Failing this, FLE shall be entitled, without prejudice to any other rights, to take all necessary measures, including having the Supply performed by third parties at Vendor's expense. In such an event, Vendor shall provide FLE and the third parties with all cooperation requested. The costs of any necessary second inspection shall be borne by Vendor.
- 7.5 Where the safety of people, property or other urgent circumstances require, FLE shall be entitled to repair damages and defects immediately at Vendor's expense, without prior notification thereof to Vendor (unless Vendor can demonstrate that it cannot be blamed for the damages and defects). Thereafter, Vendor shall be notified by FLE.

8. Delivery Dates

- 8.1 Unless expressly agreed otherwise in writing, all Goods shall be delivered Delivery at Place ("DAP") with carriage paid, in accordance with the version of Incoterms applicable at the time an Order is placed by FLE, without prejudice to the provisions contained in these GTCP. Partial deliveries shall not be permitted without the written consent of FLE.
- 8.2 Vendor shall, concurrently with the delivery of Goods, provide FLE with copies of all applicable licenses. Each delivery of Goods to FLE shall include a packing list which contains at least:
 - (a) the applicable Order number;
 - (b) the quantity shipped; and
 - (c) the date of shipment.
- 8.3 Vendor shall make no partial delivery or delivery before the agreed delivery date(s). FLE reserves the right to refuse delivery of Goods and return same at Vendor's risk and expense if Vendor defaults in the manner and time of delivery or in the rate of shipment. FLE shall not be liable for any costs incurred by Vendor in respect of any other work related to the Goods, prior to delivery in accordance with the Agreement.
- 8.4 Any design, manufacturing, installation or other work to be performed by or on behalf of Vendor under the Agreement shall be executed with good workmanship and using proper materials.
- 8.5 Vendor shall pack, mark and ship the Goods in accordance with sound commercial practices and FLE's specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for FLE. Notwithstanding the provisions of the applicable Incoterms, Vendor shall be responsible for any loss or damage due to its failure to properly preserve, package, stow or handle the Goods. FLE shall not be required to assert any claims for such loss or damage against the common carrier involved.
- 8.6 If Vendor exceeds any agreed delivery and/or completion date(s) or period(s), FLE shall be entitled to impose a penalty of 1% of the price of the Supply without prior notice of default to Vendor, for each calendar week or part thereof exceeded, up to a maximum of 10% and this shall be claimable immediately on the date the penalty is imposed.
- 8.7 Imposition, recovery or settlement of the above mentioned penalty shall not affect FLE's right to performance, compensation and termination of the Agreement.

9. Price, invoicing and payment

- 9.1 Unless agreed otherwise in writing, the agreed price in the Order is fixed in the local currency of the FLE affiliate which requires the Supply, exclusive of VAT and inclusive of all costs and charges which are necessary in order to perform the Supply.
 - 9.2 All invoices must be in the English language. FLE will pay invoices within forty five (45) days after FLE receives the invoice. Vendor cannot invoice FLE before FLE's full acceptance of the Supply (duplicates of an invoice shall be identified as such).
 - 9.3 All invoices from Vendor must be compliant with relevant local regulations and must be correctly addressed to FLE with reference to:
 - (a) the name and address of Vendor;
 - (b) the Order number as per the placed Order;
 - (c) itemized number(s) if applicable;
 - (d) related store number and name if applicable/mainframe SKU;
 - (e) bank details;
 - (f) a copy of the Order;
 - (g) Vendor's VAT number and applicable VAT rate;
 - (h) date of Supply with clear description;
 - (i) quantity of Supply;
 - (j) price excluding and including VAT; and
 - (k) any discount.
 - 9.4 FLE shall be entitled to suspend payment for as long as these details remain outstanding. Payment does not imply in any respect whatsoever a waiver of any right to performance of the Order. FLE is entitled to set off debts owed to the Vendor against claims FLE may have against Vendor by means of a set-off note.
 - 9.5 Before performing the Supply, FLE may request a deposit or bank guarantee at Vendor's expense if FLE is required by Vendor to make partial or total payment in advance of the Supply.
- ### 10. Resources, Ownership and Right of retention
- 10.1 Models, stamps, molds, templates, calibers, drawings and the like procured or manufactured by Vendor in aid of the Supply, shall be deemed to have been made available to Vendor by FLE at the moment that these articles are provided to Vendor or have been manufactured by Vendor.
 - 10.2 If FLE makes items available or is considered to have made items available to the Vendor in aid of the Supply, these shall remain or become the property of FLE and Vendor shall be obliged to retain these items, clearly marked as FLE's property and to make a declaration of ownership in FLE's favor if requested to do so.
 - 10.3 Items created by amalgamation or otherwise, become FLE's property at the moment of their creation. Vendor shall be deemed to have created the items for FLE and shall retain these new items as FLE's property and make a declaration of ownership in FLE's favor if requested to do so.
 - 10.4 Vendor shall never be entitled to exercise a right of retention over items or documents which are in his possession by virtue of the Agreement and also to rely on the right of retention as reason to refuse surrender thereof.



- 11. Intellectual Property Rights and Licenses**
- 11.1 If intellectual property rights apply to the Supply or accompanying documentation, FLE shall be entitled to the right of use thereof free of charge by means of a non-exclusive, worldwide, perpetual license. All intellectual property rights that result from the performance of the Supply by Vendor, his employees or third parties involved by Vendor for performance of the Agreement, belong to FLE.
- 11.2 Vendor shall be obliged to do everything necessary to obtain and establish the above-mentioned rights when first requested to do so by FLE. Vendor shall not be entitled to make available the results of the Supply in any way to third parties or to inform third parties thereof, without written permission from FLE.
- 11.3 Vendor hereby waives any moral rights due to it, including any paternity rights, where the law permits this.
- 11.4 Vendor guarantees that the Supply does not infringe any intellectual property rights of third parties. Vendor indemnifies FLE against any (alleged) claims by third parties in this regard and shall reimburse FLE for any damages suffered as a result thereof.
- 12. Liability**
- 12.1 Vendor shall be liable for all damages suffered by FLE due to Vendor's failure to comply with the Agreement or due to infringement of any other contractual or non-contractual obligation or duty. Vendor shall indemnify FLE against any claims by third parties for damages in this respect.
- 12.2 Vendor shall fully insure and keep insured his liability under the law and/or Agreement in respect of FLE and furthermore shall insure and keep insured all risks in its business operations which can be insured on standard terms. Vendor shall at FLE's request immediately provide (a certified copy of) the insurance policies and evidence of payment of the insurance premium.
- 12.3 Neither FLE nor Vendor excludes or limits its liability for death or personal injury arising from its own negligence, fraud, or for any liability that cannot by law be excluded or limited.
- 12.4 Subject to Article 12.3, IN NO EVENT SHALL FLE BE LIABLE UNDER ANY THEORY OF LIABILITY, FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH INCLUDES WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF IMAGE OR LOST DATA, EVEN IF FLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES and in no event shall FLE be liable to Vendor, its successors or assigns for damages in excess of the amount due to Vendor for complete performance under the Agreement, less any amounts already paid to Vendor by FLE.
- 13. Business Conduct**
- 13.1 Vendor confirms that it has read, understood and shall comply with FLE's:
- (a) Code of Business Conduct which can be found at: <https://www.footlocker-inc.com/ns/pdfs/2016/COBC-2016-final.pdf> and
- (b) Global Sourcing Guidelines (together the "Codes").
- Upon request, FLE shall provide Vendor with a copy of the Codes.
- 13.2 Any breach of the Codes by Vendor will amount to a material breach of the Agreement entitling FLE to immediate termination of the Agreement and recovery of damages from Vendor.
- 14. Force Majeure**
- 14.1 In the event that Vendor is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Vendor) and Vendor has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure.
- 14.2 FLE shall be entitled to terminate the Agreement with immediate effect by written notice to Vendor, if the context of the non-performance justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more than thirty (30) days and, upon such notice, Vendor shall not be entitled to any form of compensation in relation to the termination.
- 14.3 Force majeure on the part of Vendor shall, in any event, not include shortage of personnel or production materials or resources, strikes, not officially declared epidemic or pandemic, breach of contract by third parties commissioned by Vendor, financial problems of Vendor nor the inability of Vendor to secure the necessary licenses, legal or administrative permits or authorizations in relation to the Supply.
- 15. Non-Disclosure and Information Obligations**
- 15.1 Vendor shall provide FLE with all information pertaining to the Supply in so far as it could be of importance to FLE.
- 15.2 Vendor shall not disclose any information which it receives from FLE in connection with the Agreement, for example in the form of drawings, images, diagrams, drafts, calculations, work methods, descriptions, software or accompanying documentation. Vendor shall not reproduce, copy, make available or disclose to a third party, or use the above-mentioned information carriers in any way other than for the performance of the Supply to be provided.
- 15.3 If no Agreement has been concluded or if the Agreement has been performed, Vendor shall at the first request from FLE return the information and any copies thereof at once to FLE.
- 15.4 Vendor shall not reveal confidential information relating to the Supply to its own employees not involved with the Supply or to third parties, unless FLE has agreed to this in writing beforehand.
- 15.5 Vendor shall not be entitled to use the FLE name and/or logo in advertisements and other commercial publications without prior written permission from FLE.
- 16. Working Conditions (health and safety)**
- 16.1 Vendor must comply with all statutory provisions in the area of health and safety and use its best efforts to:
- (a) minimize, and if possible eliminate dangers to the health and safety of personnel employed by Vendor or its direct sub-contractors ("Staff") in the performance of the Supply; and
- (b) ensure that nobody who is present on a work site, including Staff, FLE personnel and visitors, incurs any physical injury.
- 16.2 Before commencing the performance of Supply, Vendor must provide FLE with a risk analysis in writing which:
- (a) analyses all potential dangers to the health and safety of the Staff and FLE personnel; and
- (b) determines measures to minimize and if possible eliminate, such dangers.
- 16.3 Vendor shall ensure that Staff:
- (a) are competent to execute the performance on the grounds of training and/or experience (and upon request Vendor shall submit written evidence of such experience and training); and
- (b) if relevant, take part in a work site-specific training organized by FLE and receive suitable personal protective equipment from Vendor before starting to execute the performance of the Supply on a work site. The Vendor shall ensure that the Staff uses the personal protective equipment in the proper manner and that such equipment is always in good working order.
- 16.4 FLE reserves the right to, as it sees fit, deny staff access to a work site and/or suspend the performance of the Supply on health or safety grounds, without any liability for loss and costs on its part.
- 16.5 Vendor shall designate as its representative for environment, health and safety ("Vendor's EHS representative") a person competent for this purpose and shall ensure that Vendor's EHS representative takes part in the safety meeting, which FLE periodically organizes.
- 16.6 Vendor shall check regularly if statutory and contractual health and safety provisions are complied with by doing safety rounds on a work site where Vendor's performances are executed. Vendor shall invite FLE to take part well in advance of the safety round. If Vendor discovers non-compliance of health and safety provisions, it shall effect compliance expeditiously and notify FLE of the findings and status of corrective measures.
- 16.7 On request of FLE, Vendor shall give immediate access to all documents regarding health and safety and relating to Vendor's performance of Supply.
- 16.8 If an incident occurs related to Vendor's performance of the Supply which results in:
- (a) death; or
- (b) serious personal injury; or
- (c) if Vendor becomes aware of an event or circumstances which could potentially lead to an event stated under (a) or (b), Vendor must notify FLE of this immediately and expeditiously do the following:
- 1) perform a root cause analysis of the incident;
 - 2) take suitable measures to rule out similar incidents in future;
 - 3) set terms for implementing the measures; and
 - 4) provide FLE with a written, sufficiently detailed report on the Root Cause, the measures to be taken and how these measure will be implemented. Vendor shall cooperate with any additional investigation by FLE.
- 16.9 If FLE has drawn up a document regarding the environment, health and safety for a work site ("EHS Plan"), FLE will forward a copy of the EHS Plan to Vendor. Vendor shall confirm receipt of the EHS Plan in writing and observe the provisions stated herein along with any updates.
- 16.10 Vendor shall ensure that its direct and indirect sub-contractors, hired for the performance of the Supply, observe the EHS Plan and its updates.
- 16.11 Without prejudice to any other rights to which FLE is entitled, FLE may, if the Vendor substantially or repeatedly fails to comply with the statutory or contractual health and safety provisions, including the provisions of this Article 16 and the provisions of the EHS Plan, terminate the Agreement without incurring any liability to Vendor.
- 16.12 Notwithstanding Article 16.11, Vendor shall (with the exclusion of other claims, including claims for loss of profit and/or loss of overhead costs coverage), be entitled to compensation for all Supply performed correctly in accordance with the Agreement prior to the termination, based on the prices and rates stated in the Order.
- 17. Personal Data**
- 17.1 Where Vendor in the performance of the Agreement processes personal data, Vendor agrees and warrants that Vendor shall:
- (a) comply with all privacy and data protection law and regulations applicable to the Supply;
- (b) process personal data only;
- 1) on behalf of and for the benefit of FLE;
 - 2) in accordance with FLE's instructions;
 - 3) for the purposes authorized by the Agreement or otherwise by FLE; and
 - 4) in so far as necessary for the Supply rendered to FLE and as permitted or required by law;
- (c) maintain the security, confidentiality, integrity and availability of the personal data;
- (d) implement and maintain appropriate technical, physical, organizational and administrative security;
- (e) do not transfer the personal data outside of the borders of the European Union and/or countries deemed to have adequate level of protection, without explicit approval from FLE and within the Data Shield safeguards.
- (f) ensure it has measures, procedures, practices and other safeguards to protect the personal data against:
- 1) anticipatable threats or hazards to its security and integrity; and
 - 2) loss, unauthorized access to, or acquisition or use of or unlawful processing; and
- (g) promptly inform FLE of any actual or suspected security incident involving the personal data.
- 17.2 To the extent that Vendor permits a sub-contractor to process the personal data, Vendor shall ensure that it binds such sub-contractor to obligations which provide a similar level of protection, but in no way less restrictive, as this Article 17.
- 17.3 Vendor shall, upon the termination of the Agreement, securely erase or destroy all records or documents containing the personal data. Vendor accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the personal data, where Vendor fails to erase or destroy the personal data upon termination of the Agreement.
- 17.4 Vendor shall indemnify and hold harmless FLE, their personnel and agents from any damages, fines, losses and claims arising out of a breach of Article 17.1, 17.2 and 17.3.
- 18. Assignment and Subcontracting**
- Vendor is not permitted to subcontract the Supply or any part thereof to third parties nor to assign its rights and obligations resulting from the Agreement in whole or in part to third parties without prior written permission from FLE.
- 19. Termination**
- 19.1 FLE shall have the right to completely or partially terminate the Agreement without further notice of default by means of written notice to that effect without prejudicing its other legal rights and remedies, in the event that:
- (a) Vendor defaults on one or more of the obligations as contained in the Agreement;
- (b) Vendor is declared bankrupt, has requested suspension of payment, its business has been shut down or liquidated, a substantial part of its assets have been attached or its business has been transferred to third parties;
- (c) the delivery of Supply is rejected after inspection or re-inspection; or
- (d) Vendor breaches the Codes.
- 19.2 In the event of termination of the Agreement, the risk of Supply already delivered and/or performed remains with Vendor. Any Goods shall then be at Vendor's disposal and they are to be collected or removed by Vendor. Vendor shall refund any payments already made by FLE immediately.
- 19.3 In the event of termination of the Agreement, Vendor shall ensure that it has provided all project documentation to FLE and will permit FLE direct access to the use of the services provided by Vendor's sub-contractor(s).
- 20. Applicable Law and Disputes**
- The Agreement shall be governed by and construed in accordance with the laws of the country in which the FLE subsidiary receiving the Supply has its registered address. The United Nations Convention on International Sale of Goods shall not apply to the Agreement. FLE and Vendor consent to the exclusive jurisdiction of the competent court(s) in the country in which the FLE subsidiary receiving the Supply is located.

