



**Ball Aerocan**

## **General Conditions of Purchase, Ball Aerocan France S.A.S**

### **1. DEFINITIONS**

“**Supplier**” means the seller or service provider.

“**Purchaser**” means the acquirer of the product or service: Ball Aerocan France SAS registered under number RC 399 240 001 Whose office is at 105 Impasse de la Valserine Usine de Châtillon en Michaille 01 200 Bellegarde sur Valserine France

Ball Aerocan France SAS is a subsidiary of Ball AEROCAN, a simplified stock company (société par actions simplifiée à associé unique) incorporated and operating under the law of France whose office is located at 27-29 rue Raffet, 75016 Paris (RCS Paris: 501 675 664).

### **2. PURPOSE**

The supply or service ordered shall be defined in the written order, any amendments thereto and any documents appended thereto that form an integral part of the order.

### **3. ACCEPTANCE**

By accepting the order the supplier shall be deemed to have accepted these conditions of purchase which shall thereupon apply to any contract between the Purchaser and the supplier and which shall exclude any other terms or conditions emanating from the supplier. By accepting the order, the Supplier waives its right to assert its own general conditions of sale.

The Supplier shall be deemed to have definitively accepted the order upon expiration of the Three-day period allotted to allow the Supplier to acknowledge receipt thereof. Any unilateral change to the conditions of the order in the Supplier's acknowledgment of receipt may entail cancellation of the order, unless expressly accepted in writing by the Purchaser.

Consequently, in the absence of an express written acceptance, any contrary provisions asserted by the Supplier shall be unenforceable against the Purchaser, regardless of when they are brought to its attention.

Any condition written on the order or on any other document attached thereto shall prevail over these general conditions of purchase.

In the event that any translation is made of the present conditions of purchase, the parties shall be bound solely by the English version.

### **4. MODIFICATION OF THE GENERAL CONDITION OF PURCHASE**

In the event that the Supplier were to grant to other buyers provisions which, taken as a whole, are more favorable than the present general conditions of purchase on the basis of similar sums, quantity and quality, which provisions are not justified by genuine valuable consideration and which would create a competitive advantage in favor of said buyers, it shall cause the Purchaser to benefit from said provisions from the day on which they are applied to the other buyers. To this end, the Supplier shall provide the Purchaser with the contents of the more favorable provisions thus granted.

### **5. PERFORMANCE OF SERVICES**

The Supplier shall deliver the ordered supply or service in a condition that is in accordance with the local laws, industry standards, decrees and regulations in force when delivering our plant in France and in compliance in particular with statutory and regulatory health and safety standards.

The quantities and qualities ordered shall be strictly honored, the Purchaser reserving the right to refuse any excess or to require the remainder in the event of any insufficiency relative to the quantities and qualities ordered. The Purchaser may return any such excess to the Supplier, at the latter's expense and risk. Any deficiency in terms of quality or performance may, at the Purchaser's sole discretion, give rise either to the cancellation of the order or to a price reduction to be negotiated with the Supplier.

### **6. SUBCONTRACTING**

The Supplier shall not, either in whole or in part, outsource the ordered supplies or services to any subcontractor without the Purchaser's prior written consent.

If the Purchaser's consent is obtained, the Supplier shall not thereby be discharged from its obligations toward the Purchaser.

### **7. PERFORMANCE PERIOD**

The delivery date indicated on the order is of the essence.

In the absence of a contrary stipulation expressly accepted by the Purchaser, the performance period refers to performance “rendered at the contractual place of delivery”. The Supplier's acceptance of the order shall entail its acceptance of the contractual performance period. In seeking to justify any delays, the Supplier may not claim to have been inadequately informed, as it is deemed to have full knowledge of the conditions of performance of the order.



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If an early delivery were to be accepted by the Purchaser, the payments shall nonetheless be made in accordance with the contractual payment schedule and the Supplier may not claim entitlement to premiums for having delivered in advance of the contractual date.

Where a late delivery is foreseeable, the Supplier shall immediately notify the Purchaser, in writing, of the extent and reasons for such delay.

In any event, if a late delivery occurs, the Purchaser shall, after sending formal instruction to the Supplier via registered letter with return receipt requested to honor its commitments within eight days, be entitled to take any measures, by substituting itself for the defaulting Supplier, to meet its own commitments; any additional costs so resulting shall be fully assumed by the Supplier.

### **8. LATE PAYMENT PENALTIES**

Save in the event of force majeure, any delivery delay beyond the contractual performance period shall entail payment, by the Supplier, of penalties equal to 0,5% of the total value of the order per calendar day of lateness, subject to the limit of 10% of the order. The application of these late delivery penalties, which do not discharge the Supplier from its contractual obligations, is deemed to accrue automatically without any prior notice being due to the Supplier, and may be made by way of deduction from the amounts the Purchaser owes to the Supplier.

### **9. DELIVERY**

The place and terms of delivery – DAP are determined according to Incoterms® 2010, released in the International Business Chamber in Paris, unless agreed otherwise.

Deliveries shall be made at the address and during the business hours specified on the order.

Every delivery shall give rise to a delivery slip to be issued together with the parcel(s), on which slip the Supplier shall indicate the order number, the reference and number of the batch of products, as well as its specifications. For the delivery to be validated, the slip must be signed by a person authorized by the Purchaser.

### **10. PRICE**

In the absence of a contrary provision expressly accepted by the Purchaser in writing, prices shall be stated on a tax-exclusive, postage paid, firm and non-adjustable basis.

Any increase in the Supplier's price schedule shall be notified to the Purchaser by registered letter with return receipt requested at least one (1) month prior to its effective date. In any event, new prices shall not apply to any orders that were sent to the Supplier before the Purchaser received such notice.

Otherwise, the change in the price schedule or sales terms shall not be applicable to the Purchaser until (1) month after it has become aware thereof.

### **11. INVOICING**

Invoices must be submitted at time according to the legislation and shall contain the references to the order and to the delivery slip. In any event, the invoices may not merely refer to the order number alone.

In any event, the invoices must contain the items provided for legislation and particularly any price reduction that has been agreed as at the date of the sale of the products and that relates directly to that sales transaction.

The Purchaser may automatically reject any invoice that does not comply with the above requirements.

Any invoice drawn up within the national territory that does not comply with the laws in force shall be returned to the Supplier to be brought into compliance.

The Supplier shall send to the purchaser all the documents he needs to complete the invoicing.

### **12. PAYMENT**

Invoices shall be paid via a bill to be issued by the Purchaser within the agreed payment terms from the issuance of the invoice.

The Supplier authorizes the Purchaser to offset, without any further formality, the sums owed by the Purchaser, or by any assignee of the invoices, against those owed by the Supplier.

### **13. WARRANTY**

In the absence of a specific agreement expressly accepted by the Purchaser, the duration of the warranty on goods delivered shall be 12 months as from the scheduled delivery date or from the actual delivery date, if later.

Any expenses or charges incurred in making a claim under this warranty shall be borne by the Supplier.

Without prejudice to the foregoing provisions, the Supplier is bound by the statutory warranty against hidden defects.

The Supplier acknowledges that the products it sells to the Purchaser are in conformity with both European and national standards and regulations. It therefore undertakes that the products it supplies shall not contain any safety defect that could entail application of the provisions on product defect liability set forth in Articles 1386-1 et seq. of the French Civil Code..

In any event, the Supplier shall not contractually limit or exempt itself from product defect liability.

Any product which, pursuant to the above warranties, is replaced or repaired shall benefit from new warranties that are identical in nature and length to the initial warranties.



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The Purchaser shall be entitled to claim damages for any defect. In any event, the Purchaser shall be entitled to ask the Supplier to repair the product so as to eliminate the defect in conformity or to supply a new product. The Supplier undertakes to bear the related costs.

The Purchaser may, in the event that a risk or potential danger may arise from a delay, decide to repair the product itself, at the Supplier's expense, so as to bring it into conformity.

### **14. FORBIDDEN SUBSTANCES**

The Supplier guarantees and is liable for the fact that all deliveries and services, e.g. of machines, materials, equipment, spare parts, auxiliary and operating substances, are free of paint wetting impairment substances (PWIS) and PWIS have also not been used during their production. In addition, these may not emit PWIS, e.g. silicon or PTFE. Should assembly and installation work be carried out at the production and warehouse sites of the Purchaser, the Supplier also guarantees that it will not use any materials containing PWIS there.

### **15. RECEPTION RECEIPTS**

Upon receiving supplies, the Purchaser shall verify their conformity with the specifications of the order and the documents needed to be sent. Any notification of non-conformity must be sent by the Purchaser within ten (10) business days of the nonconforming delivery. In case of non-conformity, the Supplier shall, at its expenses, modify its supply within the timeframe required by the Purchaser. If this timeframe is not met, the Purchaser may reject all or part of the supply or cause it to be brought into conformity, at the Supplier's expense, by a third party of its choice.

### **16. PACKAGING**

The Supplier undertakes to package the supplies in a manner that preserves their integrity until such time as they are used and to place such references on the packaging as to allow their contents to be identified.

The packaging shall be done, under the Supplier's responsibility, in accordance with the regulations in force and the customary standards of industrial packagers.

The Supplier shall bear all the direct or indirect consequences of any defect, shortcoming or inadequacy in the protection, packaging or marking of the products. Similarly, it shall be liable for any breakage, missing pieces and/or damage resulting from insufficient packaging.

If it is clear that the packaging has not been correctly done, the Purchaser shall be entitled not to accept the products upon arrival.

Any consignment or invoicing of packaging shall be indicated on the delivery slip.

### **17. TRANSFER OF OWNERSHIP**

Ownership shall pass to the Purchaser as the supplies are manufactured or the services performed, whereas, unless otherwise specified, the risk in these same supplies shall not pass until such time as they are delivered to the place provided for in the contract.

No retention clause stipulated by the Supplier can be called or set against the Purchaser unless it was expressly accepted in writing. The Supplier commits to the fact that no retention clause is stipulated by his own suppliers for any element delivered by the aforementioned suppliers and integrated into products sold to the Purchaser in conformity with the order

### **18. INTELLECTUAL PROPERTY**

Except as regards the intellectual property rights communicated by the Purchaser as well as, where applicable, the conditions of use thereof, the Supplier shall guarantee the Purchaser against any claim or action brought by the beneficiary of an industrial or intellectual property right (patents, trademarks, drawings, models, copyrights, etc.) in the course of using the products ordered; this guarantee shall remain in effect for the entire duration of said rights.

The Supplier shall indemnify the Purchaser for any costs and damages arising from any court decision holding the latter liable for infringement of the aforementioned intellectual property rights, including but not limited to legal fees and intellectual property advisory fees, indemnities, the costs of withdrawing from the market, replacement or modification costs as well as any damages arising from the interruption of the use of the products.

In the event that, for purposes of fulfilling the order, the Purchaser provides the Supplier with technical materials, drawings, models, files or documents, and more generally any intellectual property right, set out in the purchase order, the Purchaser shall remain the sole owner of said items. They shall not be entrusted to any third party without the Purchaser's express consent. The Supplier shall ensure their safekeeping. Upon completing performance of the contract, the Supplier shall return these items to the Purchaser without having to be called upon to do so.



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#### **19. CONFIDENTIALITY**

The Supplier undertakes to consider the order, as well as any other commercial and technical documents, as confidential information.

The Supplier therefore undertakes not to communicate, either in full or in part, any information or data concerning the Purchaser's business that it may gather in the course of performing the order, without the Purchaser's prior written consent.

This confidentiality obligation shall continue to apply after completion of the contract and until such confidential information has become known.

#### **20. LIABILITY**

In accordance with general law, the Supplier shall remain liable toward the Purchaser, its customers as well as third parties, for any direct or indirect harm caused by its acts or omissions, those of its agents, those of its subcontractors, or due to its supply or service.

The Supplier undertakes to take out the insurance policies needed to cover the corresponding risks for up to € 1 million per case, and to provide the Purchaser with evidence thereof upon request.

#### **21. THE PURCHASER'S LIABILITY**

The Supplier shall not make damage claims against the Purchaser for cases involving minor negligence. This exemption from liability shall be excluded for cases in which the Purchaser breaches a material contractual obligation.

In the event of a breach of a material contractual obligation caused by minor negligence, the awarding of any damages shall be limited to those that were foreseeable at the time the contract was entered into. Insofar as the Purchaser's liability is excluded or limited, such exclusion/limitation shall also apply to the Purchaser's employees, personnel, agents and subcontractors.

#### **22. SUPPLIER GUIDING PRINCIPLES**

The Supplier undertakes to comply with the attached Guiding Principles and is responsible that all of his employees and representatives are in compliance.

#### **23. FORCE MAJEURE**

Force majeure shall be deemed to include any event that is at once unforeseeable, insurmountable and external, and which prevents the Supplier from performing its obligations.

In any event, the following shall not be considered as force majeure:

The acts or missions of agents, representatives and/or sub-Suppliers, as well as any damage attributable to a breakdown of the equipment or the material used to make the ordered item; any delays in the delivery of raw materials.

Where the Supplier wishes to assert a case of force majeure, it must immediately inform the Purchaser thereof in writing, and in any case no later than 8 days following its occurrence, of all the elements demonstrating the unforeseeable, insurmountable and external nature of the event which, in its opinion, has made it impossible for it to fulfill its obligations, and the consequences it foresees on delivery of the products.

The Purchaser reserves the right to then take any measures it sees fit in order to protect its interests, either by suspending the orders in progress or by cancelling them. Any force majeure events made known to the Purchaser after the aforementioned time period shall not be taken into consideration.

#### **24. CANCELLATION**

The Purchaser may cancel its order, in particular in the following cases: force majeure, reserves indicated on the acknowledgement of receipt of the order, non-conforming materials after receipt, failure to meet the delivery date without a valid reason, non-achievement of performance levels and, in general, the Supplier's breach of its obligations. Notice of any such cancellation of the order may be sent via registered mail with return receipt requested and shall automatically entail the Supplier's return of any installment payments, with no prior formal notice being necessary.

#### **25. GOVERNING LAW AND CHOICE OF JURISDICTION**

All orders made by the Purchaser shall be governed by the foregoing provisions and by French law, even if the order is placed with a foreign Supplier: by express agreement, any clause in the Supplier's general conditions of sale that is contrary to these provisions shall be deemed automatically cancelled.

Any disputes that the parties are unable to settle amicably shall be subject, by express agreement, to the jurisdiction of the Commercial Court of Paris.



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## **ANNEXE: Supplier/ Service Provider Guiding Principles**

### 1.) Laws and Regulations

Suppliers/ Service Providers will comply with all applicable laws, rules and regulations and requirements in managing their business and in providing goods and services to Ball Aerocan.

### 2.) Employment Practices/ Human Rights

We expect our Suppliers/ Service Providers to provide a fair work environment and to adhere among others to the following principles:

- Suppliers/ Service Providers shall not employ anyone under the legal working age, nor condone physical or other unlawful abuse or harassment or use forced labor in any of their business;
- Suppliers/ Service Providers shall judge their employees upon their abilities and not discriminate on the basis of any condition or characteristic which is protected by applicable law or regulation;
- Suppliers/ Service Providers shall respect each employee's right to associate with any legally sanctioned organization;
- Work hours and wages and benefits shall be in compliance with all applicable local laws.

We expect our Suppliers/ Service Providers to manage their business in accordance with the highest standards of integrity, with a specific emphasis on human rights principles, including the United Nations Universal Declaration of Human Rights.

### 3.) Environment

Suppliers/ Service Providers are expected to meet applicable environmental laws and regulations in their operations and to develop and implement plans to correct any non-compliant practices.

### 4.) Health & Safety

We expect our Supplier/ Service Providers to provide a safe work environment in compliance with local laws and to implement policies and regulations in order to minimize accidents or injuries

### 5.) Antitrust

Ball Aerocan is committed to free competition in the marketplace. Conduct aimed at limiting competitive forces is inconsistent with that commitment and may violate antitrust laws. Suppliers/ Service Providers shall not communicate with competitors regarding current or future prices, pricing policy, sales volumes or terms, production levels or any other information that relates to the marketplace.

### 6.) Bribery and Corruption

Ball Aerocan has a strict policy against bribery and corruption. Suppliers/ Service Providers shall adhere to all applicable anti-corruption and anti-bribery legislation including, but not limited to the United States Foreign Corrupt Practices Act of 1977, as amended, and the U.K. Bribery Act of 2010, as amended. Consequently, Suppliers/ Service Providers shall not make payments or provide entertainment and gifts or anything of value directly or indirectly to government officials or others so as to influence them in the performance or non-performance of their duties or induce them to use their influence or secure any improper advantage or to obtain or retain business for Ball Aerocan.

### 7.) Demonstration of Compliance

Suppliers/ Service Providers will be expected to certify and demonstrate the compliance with these Guiding Principles at Ball Aerocan France S.A.'s request.