

# GENERAL TERMS AND CONDITIONS OF OBRIST interior AMERICA INC.

## 1. EXCLUSIVE APPLICATION

- <sup>1</sup> Unless otherwise agreed, these general terms and conditions (hereinafter: GTC) shall apply to all orders of Obrist America Inc.. These GTC take precedence over any deviating terms and conditions of the Customer.
- <sup>2</sup> Should any provision of these GTC be invalid as a whole or in part, this provision shall be replaced by a new provision to be agreed upon by the parties, which shall legally and commercially correspond to the maximum extent possible to the original provision to be replaced.

## 2. OFFER

- <sup>1</sup> Offers containing descriptions of the products to be constructed and/or the services to be provided (hereinafter: Products) are being made by Obrist America Inc. based on the Product requirements specified by Customer.
- <sup>2</sup> Generally, the initial conversation and the first offer shall be free of charge. Any further proposals, consultancy, clarifications und adjustments of the offer shall be subject to a charge. On site visits in particular shall be charged in addition and at full costs.
- <sup>3</sup> Unless otherwise specified, the validity of the offers shall be limited to thirty (30) days. Obrist America Inc. shall not be obliged to deal with declarations of acceptance received after the expiration of the aforesaid deadline.

## 3. COPYRIGHTS

All offers, drawings, blueprints und samples as well as specifications of the written offers shall remain the property of Obrist America Inc.. They may not be disclosed to third parties or used in any other manner. In particular, it is not permitted to use offers to solicit offers from competitors, even if the commercial terms are blackened.

## 4. CONCLUSION OF A CONTRACT

- <sup>1</sup> The Customer shall review the offer compiled by Obrist America Inc. and shall inform Obrist America Inc. about any possible adaptation requirements. After adjusting the offer, Obrist America Inc. shall provide an order confirmation (containing the scope of performance, prices, delivery dates and a reference to the present GTC) to the Customer.
- <sup>2</sup> The Customer shall consent to the order confirmation by signing and returning the order confirmation to Obrist America Inc.. Modifications made by Customer after its execution of the order confirmation shall be notified by Obrist America Inc. to Customer. Modifications shall be deemed accepted by the Customer absent Customer's written reaction to Obrist America Inc.'s notification thereof within ten (10) days from receipt of the notification.

## 5. ORDERING AND PRODUCTION

### 5.1 SCOPE OF PERFORMANCE

The scope of performance shall be based on the order confirmation.

### 5.2 DATES OF PERFORMANCE

- <sup>1</sup> Delivery Dates shall be determined in accordance with the order confirmation. If an order change requires an adjustment of the deadline set forth in the order confirmation, if a planned delivery date can not be met due to construction delays on site, or if a Customer has not paid on time in accordance with paragraph 6.2 below, Obrist America Inc. shall be entitled to a reasonable deadline extension to deliver its own performance.
- <sup>2</sup> In addition, Obrist America Inc. shall be entitled to an extension of the deadlines agreed upon, in case a delayed performance is not due to Obrist America Inc.'s fault and provided it has taken the required and reasonable additional measures to expedite its performance. Such events, not constituting Obrist America Inc.'s fault include but are not limited to cases of force majeure, disturbances in industrial peace, labour shortage due to general market changes, disturbances in delivery, transportation interruptions or transgression of local conditions (e.g. concerning moisture).

- <sup>3</sup> The Customer shall reimburse to Obrist America Inc. additional costs due to delays in performance which are not Obrist America Inc.'s fault (cancellation fees, transportation expenses, costs of other inconveniences, et cetera).

## 6. PRICE- & PAYMENT CONDITIONS

### 6.1 PRICES

- <sup>1</sup> The prices shall be based on the respective order confirmation. They do not include Value-Added Tax (VAT), fees, customs duties or other additional costs, charged by the authorities at the place of fulfilment and are subject to subsequent changes of the order confirmation.
- <sup>2</sup> To the extent not already specified and included in the order confirmation, the following costs shall be reimbursed separately:
- Surcharges for work considered overtime, night work, or Sunday work of assemblers of Obrist America Inc. in case of work performed by Obrist America Inc. on-site.
  - Accommodation and food for assemblers of Obrist America Inc. in case of on-site installation work.
  - Advance delivery of material.
  - Additional planning work due to design modifications or deviations from the planning fundament on which the order confirmation is based.
  - Unloading of goods.
  - Dismantling and disposal of the existing installation at the place of fulfilment.
  - Disposal of the generated waste.
  - Expenses for unplanned interim storage of goods and containers which occurred due to delays which are not Obrist America Inc.'s fault (costs of default of acceptance).
  - Charges for imports and import taxes.
  - Transportation and insurance cost in case the agreed place of fulfilment deviates from the final place of destination.
  - Safety equipment and its installation.
  - Consultations with authorities (e.g. concerning escape routes, fire compartments, light apertures, et cetera.).
  - Approval by authorities for assemblers of Obrist America Inc..
  - Unless otherwise agreed, the construction management and its support. Adaptations of linings on floors and ceilings.
  - Power connections and the installation of the lightning for the delivered Products unless it is already included in the specifications.
  - Costs related to additional expenditures which go beyond the scope of performance as described in the order confirmation.

### 6.2 PAYMENT CONDITIONS

- <sup>1</sup> Unless otherwise stated in the order confirmation, instalments shall be due as follows:
- 40% of the contractual amount upon receipt of the order confirmation
  - 30% of the contractual amount prior to the start of production
  - 30% of the contractual amount prior to the shipment of the Products
- <sup>2</sup> Checks are not accepted as means of payment. Possible transfer charges shall be entirely paid by the Customer. Customer shall not be released from meeting a payment deadline by invoking claims resulting from a possible defect. Payments not made pursuant to the agreement terms are subject to a default interest of 5% on the outstanding amount.

## 7. SECURITIES

### 7.1 RIGHT OF RETENTION

If the Customer is in payment default or if a substantial deterioration of the Customer's economic situation should occur, Obrist America Inc. shall be entitled to withhold performance or to refrain from fulfilling its obligations till such time as the compensation for Obrist America Inc.'s contractual performance has been paid or secured.

## 7.2 RIGHT OF WITHDRAWAL

In case Obrist America Inc., upon its request, has not been paid or secured for its contractual performance within a reasonable time period, it shall be entitled to withdraw from the contract, notwithstanding its right to be fully indemnified.

## 7.3 RESERVATION OF TITLE

Until the final invoice is paid in full, the Products shall remain Obrist America Inc.'s property. An entry in the relevant retention of title register shall remain reserved.

## 8. TRANSPORT UND UNLOADING

### 8.1 TRANSPORT

The responsibility for transport, the payment of costs, the transfer of benefits and risks, insurances, et cetera of the Products to be delivered shall be determined in accordance with the Incoterms-provisions (version 2010) as specified in the order confirmation.

### 8.2 OPENING UND UNLOADING

Obrist America Inc. shall open the transportation container (container, lorry, boxes, et cetera) and remove the sealing in particular. Exceptions hereto shall require the prior written approval of Obrist America Inc.. In such case, the Customer shall define the applicable procedure with Obrist America Inc. in writing. In case the seal is being removed without the prior written consent of Obrist America Inc., the warranties provided by Obrist America Inc. are being forfeited with immediate effect. The unloading of the containers shall be carried out by the Customer. It shall be Customer's responsibility to deploy an appropriate number of people on site and to provide appropriate equipment for unloading the delivered Products (forklift).

## 9. CONSTRUCTION ASSEMBLY

### 9.1 IN GENERAL

Unless otherwise agreed, the Customer shall be responsible for the organisation, the performance and the costs of the on-site assembling. It shall be Customer's responsibility to retain qualified and experienced specialists.

### 9.2 INSTALLATION BY OBRIST AMERICA INC.

<sup>1</sup> In case of a corresponding agreement, the assembling of the delivered Products shall be carried out by Obrist America Inc..

<sup>2</sup> In such case, the following terms shall apply:

- Customer shall be responsible for organising appropriate accommodation (1 room/assembler, 3-stars standard) and meals for the assemblers and he/she shall bear the corresponding costs.
- In cases of unanticipated work interruptions, which are caused by the Customer or for which it is responsible, Customer shall bear the additional costs for travel time as well as additional travel costs and additional costs of logistics.
- Customer shall bear the additional costs for surcharges due to applicable law or contractual provisions, deriving from work considered overtime, night work or Sunday work. Engagements taking place outside normal working hours (6 am to 8 pm local time) shall be compensated with an extra compensation charge of one hundred percent (100%).
- Customer shall bear the costs of adjustment work which derives from deviations between the cubic capacity provided by him/her and the actual measures on site as well as in cases of dimensional deviations as a result of deformed walls, murals or any other facility parts. Obrist America Inc. shall immediately notify such findings to the Customer in writing.
- Customer shall bear additional costs due to aggravating circumstances during installation, which could not have been reasonably foreseen by the time the offer was made. Obrist America Inc. shall immediately notify such findings to the Customer in writing.
- Customer shall bear the costs to cover construction components as a result of inadequate storage facilities during the installation phase.
- Customer shall be responsible for object-related investigations and consultations with authorities and to gather information from principal such as information concerning escape routes, fire compartments, light apertures et cetera.
- Customer shall be responsible for the determination of the moisture content at the construction site. The moisture content shall meet the applicable SIA standards. The Customer shall immediately inform Obrist America Inc. about its findings in writing.

- Customer shall sufficiently prepare the floor coverings and walls at the construction site for the installation.
- Obrist America Inc. may assume that the electronic connections and the distribution boxes on site are appropriate for the new installations and that no amendments or capacity adjustments are necessary.
- Unless otherwise agreed, Customer shall be responsible for the construction management and -coordination.
- Customer shall be responsible for the general construction site safety and the cleaning.
- Customer shall bear all consequences of on-site delays due to delayed completion of preparatory or ancillary work.

## 10. ACCEPTANCE

The Products supplied shall be deemed to be delivered at the time of acceptance. As of such time, the warranty period for work and material shall start. The acceptance shall take place at the time of arrival of the Products at the agreed place of fulfilment or, in case Obrist America Inc. is performing the assembling, after the completion of the work to be performed by Obrist America Inc.. The acceptance protocol shall be signed by the Customer and Obrist America Inc.. In case Obrist America Inc. is being represented, the representative shall sign the protocol. The protocol shall be immediately submitted to Obrist America Inc.. The delivered Products shall be deemed to be accepted notwithstanding Customer's failure to sign the acceptance protocol. Should no acceptance has taken place within thirty (30) days following the delivery of the Products or the completion of the assembling by Obrist America Inc., the last fulfilment action carried out by Obrist America Inc. shall be considered as acceptance.

## 11. WARRANTY UND LIABILITY

### 11.1 IN GENERAL

- <sup>1</sup> Obrist America Inc. warrants that all goods and services are properly being produced or performed in accordance with the order confirmation. Defects shall be notified by Customer to Obrist America Inc. in writing without delay after their discovery during the warranty period. Any liability for indirect or consequential damages is being excluded to the extent permitted by law.
- <sup>2</sup> The warranty period granted by Obrist America Inc. to Customer for workmanship and Product manufacturing shall be one **(1) year** which period shall start upon acceptance.

### 11.2 VISUAL DEFECTS AND DIFFERENCES IN COLOUR AND STRUCTURE

- <sup>1</sup> The Customer shall report any visual defects (e.g. scratches) upon acceptance. Reporting of any such defects at a later stage is excluded.
- <sup>2</sup> Obrist America Inc. shall not be liable for differences in colour of the Products supplied from samples submitted to Customer, as well as for differences between various natural products (wood structure, stone, et cetera).
- <sup>3</sup> Light flux and power of LED\_modules/light sources shall have a tolerance of +/- 10% of the nominal value. Values lying within this tolerance shall not constitute a defect. The perception of the light colour and the luminosity can differ depending on the location.

### 11.3 INACCURATE CONSTRUCTION DIMENSIONS

Obrist America Inc. shall only be liable for inaccurate cubic capacities if it was Obrist America Inc.'s responsibility to take measurements on site. Obrist America Inc. shall not be liable for cubic capacities and deviations to the produced Products respectively, measures had been provided by the Customer.

### 11.4 UNLOADING, UNPACKING AND INSTALLATION

Obrist America Inc. shall not be liable for damages which occurred during unloading and unpacking of the delivered Products. Moreover, Obrist America Inc. shall not be liable for damages which occurred during an installation carried out by the Customer or by any third parties engaged by the Customer.

### 11.5 ELECTRICAL DEVICES

For electrical devices such as light, illuminants, et cetera, Obrist America Inc. only provides a warranty corresponding to the warranty terms of supplier. Upon request of Customer, Obrist America Inc. shall assign existing warranty claims against the supplier or manufacturer to Customer.

**11.6. IMPROPER HANDLING AND USE**

The warranty shall be excluded for any defects or damages resulting from improper handling or use by the Customer.

**12. ADVERTISEMENT**

Unless otherwise agreed, for the purpose of advertising and information, Obrist America Inc. shall be permitted to refer to works carried out for the Customer.

**13. APPLICABLE LAW AND JURISDICTION**

These GTC are governed by the laws of Switzerland. Subject to deviating mandatory places of jurisdiction as indicated by Swiss Federal Law, place of jurisdiction to settle any claim or dispute which might arise out of or in connection with an order or these GTC shall be Lucerne.