

# **General Terms and Conditions of Purchase of Ecolab Europe GmbH, Wallisellen (ZH), Switzerland**

**(Version: April 2020)**

## **1. Application**

- 1.1. These General Terms and Conditions of Purchase shall apply for all contracts between Ecolab Europe GmbH, Wallisellen (ZH), Switzerland and other companies of the Ecolab-Group which may refer to them (hereinafter collectively referred as "Ecolab") and the supplier.  
Deviating written individual agreements take priority over these general terms of purchasing.
- 1.2. Supplier's General Terms and Conditions of Sale shall not apply except if expressly agreed upon in writing by Ecolab. The confirmation and actual performance of a purchase order of Ecolab shall be deemed consent by the supplier to these purchasing terms.
- 1.3. The application of the convention of the United Nations on contracts for the international sale of goods dated April 11, 1980 (CISG) is expressly excluded by these terms of purchasing.

## **2. Purchase orders, Product calls**

- 2.1. Purchase orders of Ecolab are only binding if they are issued or confirmed by Ecolab in writing, via facsimile or in electronic form. Product calls in case of frame agreements can also be issued by Ecolab's authorized manufacturing companies of the Ecolab group in the name and on the account of Ecolab.
- 2.2. The supplier shall accept the purchase order (or the product call in case of frame agreements) within five working days and shall specify the price and the delivery date. Deviations from the purchase order or the product call of Ecolab as well as later deviations from the contract only apply if expressly agreed upon in writing by Ecolab.

## **3. Date of delivery**

- 3.1. The date of delivery is met if the ordered goods are received within the agreed delivery deadline at the receiving site indicated in the purchase order or the product call.
- 3.2. The supplier shall immediately inform Ecolab or the calling manufacturing company of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.
- 3.3. In case of default in delivery Ecolab has the right to claim a penalty which equals 0,5% of the order value per beginning week but not more than 5% of the order value of the delivery. This will not diminish Ecolab's other rights to claim further damages or to rescind from the contract.

#### **4. Prices**

- 4.1. The agreed prices are fixed prices. Further charges are not allowed. The agreed prices include all costs which are necessary until the contract is fulfilled (including but not limited to costs for packaging, transport, insurance, customs clearance, installation).
- 4.2. The prices are excluding the respective statutory VAT.
- 4.3. Unless otherwise agreed the purchase price is due and payable within 14 days from receipt of the proper invoice with 2% discount or net within 60 days from receipt of the proper invoice. The supplier's invoice may not be submitted until the goods have been duly delivered.
- 4.4. Invoices must, at a minimum, contain the following descriptions:
  - Complete and correct name and address of the vendor
  - VAT registration no. (Europe of the vendor) - if available
  - Complete and correct name and address of the ordering Ecolab entity
  - VAT number of the ordering Ecolab entity
  - Invoice date
  - Unique reference (e. g. sequence number) / Invoice number
  - Quantity and description of the products delivered / type and scope of service delivered
  - Net amount, gross amount, currency
  - Tax percentage, tax amount in currency
  - Payment terms

#### **5. Passing of risk, Shipment**

- 5.1. The risk of loss or damage to the goods passes to Ecolab upon proper and complete delivery in accordance with the separately agreed Incoterms 2010.

#### **6. Liability, Warranty**

- 6.1. The supplier warrants that all goods are complete and free from any defects, meet the warranted quality and comply with the stipulated specifications as well as all applicable laws, regulations and other rules.
- 6.2. Warranty claims shall be time-barred after 24 months of the passage of risk unless expressly otherwise agreed. The supplier renounces to raise the defence of delayed notification of defects.
- 6.3. If any of the goods delivered do not conform with the warranty set out in clause 6.1. the supplier shall be obligated (at the discretion of Ecolab) to remedy the defect on its own costs, to reduce the purchase price, to deliver fully conforming goods without charge to Ecolab or to pay the damages. In case of imminent danger Ecolab is entitled after giving notice to the supplier to remedy the defects on the supplier's cost.

- 6.4. REACH – The Supplier warrants that he has undertaken all necessary measures to comply with the regulation EC 1907/2006 (“REACH”) pre-registration and registration obligations for the Products, and that he will ensure uninterrupted supply availability to Ecolab of Product compliant with REACH. Supplier further warrants that he will support Ecolab’s intended use of the Products and generate any necessary support information required for REACH compliance. Supplier shall provide Ecolab with six months’ prior written notice of any known or anticipated change to the REACH compliance status of a Product that could interrupt supply availability to Ecolab. Supplier shall provide immediate written notice to Ecolab should any issues relating to REACH compliance of Products previously provided to Ecolab arise or become known to Supplier. Supplier shall send all documents and correspondence relating to REACH to Ecolab’s REACH program manager at Ecolab, REACH Program Office, Winnington Avenue, Northwich, Cheshire CW8 4DX, United Kingdom (e-mail: [reach@ecolab.com](mailto:reach@ecolab.com)) and Supplier shall identify and provide up-to-date contact details of the person with day-to-day responsibility for REACH within Supplier’s organization. Supplier acknowledges the importance to Ecolab of continuing supply of the Products and shall reimburse Ecolab for all costs and damages arising from any REACH non-compliance issue related to the Products or any disruption in Product supply arising out of or relating to REACH compliance issues.
- 6.5. EU BPR Regulation EC 528/2012 – Supplier confirms that all biocide active substances supplied are listed on a positive list according to Art 95 EU BPR or come to be listed directly. Supplier will give free of charge access to any substances data (letter of access to biocide active dossier data (LoA) and a list of endpoints (LoE)) and show technical equivalence of active substances by ECHA (TE). Supplier shall reimburse Ecolab for all costs and damages arising from the non-compliance of the products with the above-mentioned EU BPR requirements or any disruption in product supply arising out of or relating to EU BPR compliance issues.

## **7. Product Liability, Insurance**

- 7.1. The supplier shall, upon first demand, indemnify Ecolab and hold Ecolab harmless from and against any and all liability or claims of third parties based on the manufacture, delivery, storage, or use of the delivered goods. The above indemnification shall not apply if the claim is based on Ecolab’s negligent or intentional breach of duties.
- 7.2. The supplier shall be obligated at all times to maintain product liability insurance with an adequate minimum insurance amount of 2 Mio. € for each single occurrence of personal and property damage. Further damages shall remain unaffected.

## **8. Third party rights**

- 8.1. The supplier warrants that the goods are free from rights of other parties and that delivery of the goods does not violate any rights of third parties. The supplier shall indemnify Ecolab, upon first demand, from any claims of third parties in this regard.
- 8.2. Claims based on a breach of third party rights shall be time-bared after 24 months of the passage of risk.

## **9. Confidentiality, Ownership**

- 9.1. The supplier shall keep confidential the purchase order and all work, information and delivery connected therewith. The confidentiality obligation shall continue to apply after the termination of the contract.
- 9.2. All objects, samples, models, drawings etc. which will be handed over to the supplier remain the ownership of Ecolab.

## **10. Brexit Event**

- 10.1 The following terms in this Section 10. shall have the meaning set out below:

“Brexit Event” shall mean the withdrawal of the United Kingdom from the European Union in accordance with Art 50 of the treaty on the European Union.

“Tariff” shall mean any charge, tariff, tax or duty imposed in any jurisdiction on the import or export of any of the Products or the raw and/or packaging materials used to manufacture the Products.

“Trade Barriers” shall mean any restrictions, requirements to obtain authorizations, registrations or listings or other administrative procedures (including those under REACH, EU BPR or the respective United Kingdom regulatory legislation) that must be complied with by Ecolab before Ecolab is able to import the Products into or freely use or supply the Products within any member state of the European Economic Area (“EEA”) or within the United Kingdom.

- 10.2 If as the result of the Brexit Event Ecolab’s economic benefits are adversely and materially affected by a Tariff, Trade Barrier or by exchange rate fluctuations the Supplier shall promptly consult with Ecolab and the parties shall use their best efforts to implement any adjustments necessary to maintain Ecolab’s economic benefits derived from this Agreement on a basis no less favorable than the economic benefit Ecolab would have derived if the Brexit Event had not occurred.
- 10.3 If the parties fail to come to a respective adjustment then Ecolab shall have the right to earlier terminate this Agreement with [.....] days prior written notice at any time.
- 10.4 Notwithstanding the foregoing the obligations of Supplier under Sections 6.4 and 6.5 here above shall remain unchanged in the Brexit Event and in addition to REACH and EU BPR compliance the Supplier also warrants compliance with the respective UK regulatory legislation.

## **11. Place of performance, law and jurisdiction**

- 11.1. Place of performance is the location (delivery address) of the calling manufacturing company. Place of performance for payment claims of the parties is the corporate domicile of Ecolab.
- 11.2. This contract shall be exclusively governed by the substantial laws of Switzerland.
- 11.3. The competent place of jurisdiction for all disputes between the supplier and Ecolab shall be the courts at the corporate domicile of Ecolab. Ecolab reserves the right to initiate a legal proceeding also at the place of business of the supplier.