

## **General Terms and Conditions of Purchase of Ecolab Europe GmbH and its Affiliates**

**(Version: April 2021)**

### **1. Scope**

- 1.1. These General Terms and Conditions of Purchase shall apply for all contracts, in particular to orders for the deliveries of products and/or the provision of services, between Ecolab Europe GmbH, Wallisellen (ZH), Switzerland, or any of its Affiliates which may refer to them (hereinafter collectively referred as "Ecolab") and the supplier of products or the service provider (hereinafter referred as "Supplier"). "Affiliate(s)" shall mean any other person or company that directly or indirectly controls, is controlled by, or is under common control with Ecolab Europe GmbH. "Control" or "controlling" means direct or indirect beneficial ownership of more than fifty percent (50%) of the voting or income interest in such person or company; or of the power to direct or cause the direction of management, policies, or activities of a person or entity, whether through the ownership of voting securities or other interest, by contract or otherwise.
- 1.2. Deviating written individual agreements between Ecolab and Supplier take priority over these General Terms and Conditions of Purchase.
- 1.3. Supplier's General Terms and Conditions of Sale shall not apply except if expressly agreed upon in writing by Ecolab.
- 1.4. The confirmation and actual performance of a purchase order of Ecolab shall be deemed consent by Supplier to these General Terms and Conditions of Purchase.
- 1.5. 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 General Terms and Conditions of Purchase.

### **2. Purchase orders**

- 2.1. A binding contract between Ecolab and Supplier requires a purchase order which is accepted, in accordance of clauses 2.2. and 2.3 below.
- 2.2. Purchase orders of Ecolab are only binding if they are issued or confirmed in writing, via facsimile or in electronic form, by an authorized person.
- 2.3. Supplier shall accept the purchase order and shall confirm the price and the date of delivery/date of provision of services within five (5) working days as from receipt. Lack of rejection of the purchase order within five (5) working days shall be understood as acceptance. Deviations from the purchase order of Ecolab as well as later deviations from the contract only apply if expressly agreed upon in writing by Ecolab. Purchase order may be cancelled at any time by Ecolab subject to a reasonable notice period.

### 3. Delivery

- 3.1. The date of delivery is met if the ordered products are received or the ordered services are performed, in full, by Supplier within the agreed deadline at the receiving site indicated in the purchase order. Advance deliveries of products/provision of services or partial deliveries/partial provision of services require Ecolab prior written consent.

As soon as Supplier recognizes it will not be able to fulfill its contractual obligations, either in full or in part, or not within the stipulated timeframe, it must notify Ecolab in writing. The notice must state both the reason(s) for the delay and the predicted delay in time of delivery/time of performance. Any acceptance by Ecolab of a delayed or partial delivery of products/provision of services shall by no means constitute a waiver of any rights or claims of Ecolab due to late or partial delivery of products/provision of services.

- 3.2 Without prejudice to Ecolab any other rights to claim further damages or to terminate from the contract, in case of delay in delivery of products or in provision of services, Ecolab has the right to claim a penalty which equals two percent (2%) of the order value per each week of delay.

### 4. Prices, Payment, Offsetting, and retention

- 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, labour, material). Unless otherwise set forth on all agreed prices under contract are set DDP (Incoterms 2010).

- 4.2. The prices are excluding the respective statutory VAT.

- 4.3. Unless otherwise agreed and to the fullest extent permitted by any applicable law of public order, the purchase price is due and payable within one hundred and twenty (120) days from Ecolab's receipt of the proper invoice. For any payment made within fourteen (14) days from the receipt of proper invoice, Ecolab will benefit from a two percent (2%) discount. Supplier's invoice may not be submitted until the products have been duly delivered or the services duly performed to Ecolab.

**Any provision of this contract regarding payment terms that may be invalid or ineffective by any applicable law of public order shall be replaced, for the purpose of the contract, by the longest payment period permitted by such law.**

- 4.4. Invoices must, at a minimum, contain the following descriptions:

- Complete and correct name and address of Supplier
- VAT registration number of Supplier - 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 provided
- Net amount, gross amount, currency
- Tax percentage, tax amount in currency
- Payment terms

- 4.5. Supplier is only permitted to offset claims that are undisputed or substantiated by court judgement. Supplier is only entitled to a retention right if the claim, due to which the right of retention shall be deemed valid, has its origins in the same contractual relationship.

## **5. Transfer of risk and title, shipment**

- 5.1. The risk of loss or damage and the title to the products passes to Ecolab upon proper and complete delivery in accordance with the separately agreed Incoterms 2010.
- 5.2. Unless otherwise set forth on all products provided under contract shall be delivered in accordance to DDP Incoterms.

## **6. Liability, Warranty**

- 6.1. Supplier warrants that all products delivered and services performed are good merchantable quality, complete and free from any defects, free of all liens and other encumbrances, meet the warranted quality and comply with the stipulated specifications as well as all applicable laws, regulations and other rules.
- 6.2. Warranties set forth in this clause 6.1. shall apply for a period of twenty-four (24) months from the date of delivery of the products or performance of the services by Ecolab. Supplier renounces to raise the defense of delayed notification of defects.
- 6.3. If any of the products delivered or services performed do not conform with the warranties set out in clause 6.1. and without prejudice to Ecolab any other rights to claim further damages or to terminate from the contract, Supplier shall be obligated (at the discretion of Ecolab) to remedy the defect on its own costs, to reduce the purchase price, to deliver or perform fully conforming products or services without charge to Ecolab in a reasonable period specified by Ecolab or to pay the damages. In case of imminent danger Ecolab is entitled after giving notice to Supplier to remedy the defects directly or via a third party at Supplier's cost.
- 6.4. Supplier will respond to any warranty complaint under these terms, within seven (7) working days of its notification. Failure to reply within this period will mean that the complaint is accepted.
- 6.5. REACH – Supplier warrants that he has undertaken all necessary measures to comply with the regulation EC1907/2006 ("REACH") pre-registration and registration obligations for the products, and that it will ensure uninterrupted supply availability to Ecolab of product compliant with REACH. Supplier further warrants that it 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 (6) 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) 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.

- 6.6. 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.
- 6.7. At all time, Supplier shall comply with Ecolab Supplier code of conduct who is accessible on the following link: <https://www.ecolab.com/about/suppliers/supplier-policies>.

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

- 7.1. 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 products and/or services or otherwise in connection with Supplier's performance under these General Terms and Conditions of Purchase. The above indemnification shall not apply if the claim is based solely on Ecolab's negligent or intentional breach of duties.
- 7.2. Supplier shall be obligated at all times to maintain sufficient liability insurance – including but not limited to product liability insurance with an adequate minimum insurance amount of 2 Mio. € for each single occurrence of personal and property damage - at its own expense for damage for which it or its subcontractors or agents for which it is vicariously liable are responsible. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to Ecolab upon request. Supplier's contractual and legal liability remains unaffected by the extent and the amount of its insurance coverage.
- 7.3. Ecolab acknowledges that Supplier may from time to time modify any of the products or services (partially or totally). In such case and before implementing any change, Supplier shall provide Ecolab with a minimum twelve (12) month written notice period.
- 7.4. Any change in the product or service without Ecolab's prior written information according to the above mentioned notice period constitutes a significant breach of the contract. In such case, Ecolab shall have the right to terminate the contract immediately upon written notice and shall be entitled to damages.

## **8. Third party rights**

- 8.1. Supplier warrants that the products and services are free from rights of other parties and that delivery of the products and/or performance of the services do not violate any rights of third parties.
- 8.2. Notwithstanding other legal claims, Supplier shall indemnify Ecolab against any liabilities, damages, losses (including but not limited to any direct, indirect, immaterial and consequential losses), and reimbursement of expenses suffered or incurred by Ecolab as a result of any claim made against

Ecolab by a third party arising or in connection with the delivery of goods or performance of the services or as a result of the infringement by Supplier of its contractual obligations. More extensive legal rights of Ecolab remain unaffected

## **9. Confidentiality, Ownership**

- 9.1. All information, including, but not limited to, formulas, know how, processes, customer lists, cost and pricing information, marketing information and strategies, financial information, drawings, materials, products, equipment or apparatus, technology, and technical information disclosed or delivered by one party to the other party or arising from the performance of this contract (collectively, "Confidential Information") must be treated by the receiving party as confidential and proprietary information. None of the Information may be (i) used by the receiving party for any reason other than to assist it in the performance of its obligations under this contract, or (ii) disclosed by the receiving party to any third party. The receiving party must use all reasonable efforts to safeguard the Confidential Information, but under no circumstance may the receiving party use safeguards that are less rigorous than the safeguards the receiving party employs to protect its own confidential information. The receiving party may disseminate the Confidential Information to its employees and agents but only to the extent those employees and agents have a need to know the Confidential Information to assist the receiving party in the performance of this contract. The receiving party must advise and inform its employees and agents of its obligations under this clause and require that those employees and agents abide by the receiving party's obligations. Upon either party's request (or immediately, upon the expiration or termination of this contract), the other party must promptly return all Confidential Information to the requesting party, including all copies, notes and extracts regarding the Confidential Information.
- 9.2. The restrictions above do not apply to information which (i) was known to the receiving party prior to the receipt of that information from the disclosing party; (ii) was patented or otherwise in the public domain at the time of disclosure by the disclosing party to the receiving party, or subsequently enters the public domain through no breach of this contract; (iii) was obtained by the receiving party from a third party who was under no duty of confidentiality to the disclosing party; (iv) can be proven, by written records, to have been independently developed by the receiving party without the aid, application or use in any way of information, material or assistance obtained from the disclosing party pursuant to this contract. In the event the receiving party is required by judicial or administrative process to disclose the Confidential Information, where legally permissible, the receiving party shall promptly notify the disclosing party and in writing of such requirement to allow intervention by the disclosing party (but in any event prior to the disclosure), and uses its best efforts to cooperate with the disclosing party to contest or minimize the scope of the disclosure (including application for a protective order), and limits such disclosure to the party entitled to receive the Confidential Information and to the scope of the legal requirement.
- 9.3. All objects, samples, models, drawings etc. which will be handed over to Supplier remain the ownership of Ecolab.

## **10. Brexit Event**

- (a) The following terms in this clause 10 shall have the meaning set out below:

“Brexit” refers to the withdrawal of the United Kingdom from the European Union on 1<sup>st</sup> January 2021, 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 services, or the raw and/or packaging materials used to manufacture the products or services.

“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 or services into or freely use or supply the products or services within any member state of the European Economic Area (“EEA”) or within the United Kingdom.

(b) If as the result of any event or change of legislation following Brexit (“Brexit Event”) Ecolab’s economic benefits are adversely and materially affected by a Tariff, Trade Barrier or by exchange rate fluctuations 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,

(c) If the parties fail to come to a respective adjustment then Ecolab shall have the right to earlier terminate this Agreement with ninety (90) days prior written notice at any time.

(d) Notwithstanding the foregoing the obligations of Supplier under REACH and BPR here above shall remain unchanged in the Brexit Event and in addition to REACH and EU BPR compliance Supplier also warrants compliance with the respective UK regulatory legislation.

## **11. Termination**

Either party has the right to terminate the contract for good cause, without prior intervention by a court or arbitral tribunal being required, upon written notice of said good cause, with immediate effect or with effect as of such later date as specified in the notice.

Following events (without this list being limitative) are considered as “good cause” under this contract:

- (a) the failure to perform any of a party’s obligations under this contract, which failure is not cured within thirty (30) days of the other party’s written notice specifying the Event of Default; and
- (b) the other party becomes insolvent or enters into dissolution or liquidation, files for a petition in bankruptcy, has been declared bankrupt, has been dissolved or has filed a voluntary petition for proceedings in temporary relief of creditors, or any similar events under the laws of any competent jurisdiction.

## **12. Data protection**

In case the Supplier, in the course of performance of the contract, receives from Ecolab or otherwise obtains

personal data related to employees of Ecolab (hereinafter referred as “Personal data”), Supplier commits to process Personal Data for the performance of the respective contract exclusively.

Supplier shall ensure that Personal Data is only accessible by its employees, if and to the extent such employees need access for the performance of the respective contract (need-to-know-principle). Supplier shall not disclose Personal Data to any third party.

Any treatment of Personal data shall be in strict compliance with any applicable law and, including but not limited to the General Data Protection Regulation EU 2016/679. Supplier shall therefore ensure a level of security appropriate to the risk of misuse and loss of Personal Data. Supplier shall inform Principal in case of a Personal Data breach, in particular in case of loss, without undue delay, however not later than twenty-four (24) hours after having become aware of it.

Under no circumstances Supplier will acquire ownership of or other proprietary rights to the Personal Data and any right of retention of the Supplier with regards to Personal Data is excluded. Upon termination of the contract, Supplier shall, according to applicable laws, erase the Personal Data including any and all copies thereof.

In addition, at all time, Supplier shall allow Ecolab or its employees to rectify, erase and/or restrict the processing of the Personal Data.

### **13. Subcontractors, Assignment**

13.1. The assignment by Supplier of any of its rights and obligations under the contract to third parties (including but not limited to transfer of receivables or the use of subcontractors) may only take place with the consent of Ecolab granted in writing.

13.2. Ecolab, at its sole discretion, may assign or transfer this contract in whole or in part to any Affiliate by notice in writing.

### **14. Force majeure**

Performance of any obligation under the contract may be suspended, in whole or part, by either party without liability to the extent that an act of God, war, fire, inability to obtain raw materials due to allocation, pandemic or any other occurrence beyond the reasonable control of such party or labor trouble, strike or injunction (if such labor event is not caused by the bad faith or unreasonable conduct of such party) delays, prevents, restricts or limits the performance of this contract. The affected party may invoke this provision by promptly notifying the other party of the nature and estimated duration of this suspension. If the parties are not able to agree on a mutually satisfactory resolution, then Ecolab has the right to terminate the contract based on article 11.

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

15.1. 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.

15.2. This contract shall be exclusively governed by the substantial laws of Switzerland.

15.3. The competent place of jurisdiction for all disputes between 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 Supplier.