

## General Terms and Conditions of Purchase of Ardagh Group SA and its Affiliates

### 1. GENERAL

These general terms and conditions ("GTC") shall apply to any purchase of Ardagh Group SA and its affiliated companies ("Affiliates" means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity) ("Ardagh") from any supplier ("Supplier") and shall prevail over any terms and conditions proposed by the Supplier. Any quotation, order or agreement on the purchase of goods ("Goods" means products as set out in the Contract and where the context requires, ordered by and supplied to Ardagh) and services ("Services" means services as set out in the Contract, including services which are incidental or ancillary to such Services) (the "Contract"), shall automatically incorporate these GTC.

### 2. OFFER & ACCEPTANCE

- 2.1. Contracts by Ardagh can be made in writing, per e-mail or through other specifically agreed means and shall be valid and binding only upon Ardagh's acceptance in writing.
- 2.2. No changes of any agreement shall be effective unless it is in writing and signed by the parties.

### 3. QUALITY AND DEFECTS

- 3.1. The Supplier warrants that the Goods and Services shall be of the agreed design, quality, material and workmanship, be without fault, conform in all respects with the Contract and comply with all applicable standards, regulations and other legal requirements concerning the manufacture, packaging and delivery of the Goods and Services, including full compliance with local, national and Ardagh's health and safety, security, fire and other employment related rules, policies and regulations applying to that site.
- 3.2. The Supplier shall exercise all due skill, care and diligence in the performance of the Contract.
- 3.3. At any time Ardagh shall have the right to audit the Supplier's and its suppliers' facility in compliance with the Contract during normal business hours.

### 4. DELIVERY

- 4.1. Unless otherwise specified by Ardagh in writing: all Goods shall be delivered DDP (Incoterms 2020).
- 4.2. Services shall be provided in accordance with the Contract.
- 4.3. The Supplier shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows; the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered and marked in accordance with Ardagh's instructions and any applicable regulations or requirements of the carrier, and properly packed and stored so as to reach their destination in an undamaged condition.
- 4.4. Time of delivery shall be of the essence.
- 4.5. Unless otherwise stipulated by Ardagh in the order, deliveries shall only be accepted by Ardagh during the business hours of the relevant Goods inwards department.
- 4.6. If the Goods and Services are not delivered on the agreed delivery date during Ardagh's business hours, without prejudice to any other right which Ardagh may have, Ardagh shall be entitled to:
  - a) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;
  - b) recover from the Supplier any expenditure reasonably incurred by Ardagh in obtaining the Goods and/or Services in substitution from another supplier; and

- c) claim damages for any additional costs, loss or expenses incurred by Ardagh which are in any way attributable to the Supplier's failure to deliver the Goods and Services on the agreed delivery date.

- 4.7. If the Supplier requires Ardagh to return any packaging material to Supplier this must be clearly stated on any delivery note delivered to Ardagh and any such packaging material will only be returned to Supplier at its expense and risk.

- 4.8. If the Goods and Services are delivered to Ardagh in excess of the quantities ordered Ardagh shall not be bound to accept and pay for the excess. Any excess will be and will remain at the Supplier's risk and Goods will be returnable at the Supplier's expense.

### 5. PRICE

The prices of the Goods and Services shall be exclusive of value added tax but inclusive of delivery, packaging and all other charges. The Supplier shall not be entitled to change the price or to charge any extra costs, unless otherwise agreed in writing.

### 6. PAYMENT

- 6.1. The Supplier shall invoice Ardagh in respect of the Goods upon, but separately from, dispatch of the Goods to Ardagh and in respect of the Services upon completion of performance of the Services at the earliest.
- 6.2. Ardagh operates a payment cycle and approved invoices will be released for payment in the payment run following the invoice's due date. The invoices' due date shall occur 90 days from the later of (i) date of receipt of the Goods and/or completion of the Services, (ii) date of the invoice and (iii) date of receipt of the invoice. In countries where there are maximum legislated due dates the invoice due date shall correspond to the maximum permissible payment due date. However, time for payment shall not be of the essence of the Contract. Payment terms may be changed where agreed in writing and signed by both parties.
- 6.3. Without prejudice to any other right or remedy, Ardagh reserves the right to set off any amount owed by Ardagh to the Supplier against any amount payable by Supplier to Ardagh.

### 7. RISK AND TITLE

Risk and title shall pass in accordance with DDP (Incoterms 2020) unless otherwise specified and agreed in writing and signed by the parties.

### 8. REMEDIES

Without prejudice to any other right or remedy which Ardagh may have, if any Goods and Services are not supplied in accordance with, or the Supplier commits a material breach of any of the terms of any Contract, and whether or not any Goods and Services have been accepted by Ardagh, Ardagh shall be entitled:

- a) to terminate or rescind any Contract;
- b) to reject all Goods and Services (in whole or in part) and return the Goods to the Supplier at the risk and cost of the Supplier who shall refund the Purchase Order/Contract price for all Goods;
- c) at Ardagh's option to carry out at the Supplier's expense any work necessary or to give the Supplier the opportunity at his expense, either to remedy any defect in the Goods and Services or to deliver replacement of the Goods or to provide the Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; and
- d) to claim all direct, indirect and consequential damages, liabilities, costs, expenses and losses incurred or suffered by

Ardagh as a result of or in connection with the Supplier's breach of the Contract.

#### **9. INDEMNITY**

The Supplier shall indemnify, and keep indemnified, Ardagh in full against all direct, indirect and consequential damages, liabilities, expenses and losses (including any professional fees and expenses) arising out of or in connection with any claim or suit made against Ardagh arising out of or in connection with:

- a) defective workmanship, quality or materials;
- b) any negligence of the Supplier, its employees, agents or subcontractors in the supply of the Services;
- c) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and/or Services;
- d) any liability, loss, damage, injury, cost or expense sustained by the Supplier's employees in performing any Contract or attending at any of Ardagh's sites (except to the extent that such claim relates to death or personal injury arising from Ardagh's negligence);
- e) any act or omission of the Supplier or its employees, agents or subcontractors in supplying, delivering and installing the Goods or performing the Services in accordance with any Contract; or
- f) any breach, negligent performance or failure or delay in performance of any Contract by the Supplier, its employees, agents or subcontractors.

#### **10. INSURANCE**

10.1. Without prejudice to its obligations under this Agreement, Supplier shall effect and maintain in full insurance policies on standard rates and terms with a reputable insurance company covering any and all of the Supplier's liabilities in respect of any act or omission for which the Supplier's may become liable to indemnify or otherwise pay Ardagh under the terms of any Contract including Public/Products Liability Insurance, with a minimum limit of Euro 10,000,000 (ten million) per claim, unlimited any one period of insurance, and in the aggregate in respect of products liability.

10.2. On Ardagh's first demand the Supplier shall send a copy of its insurance policy or policies to Ardagh.

#### **11. CONFIDENTIALITY**

The Supplier, his employees and subcontractors shall keep confidential all information which it has obtained from Ardagh or its agents, including, without limitation, technical or commercial know-how, specifications, inventions, processes or initiatives and any other confidential information concerning Ardagh's business or its products.

#### **12. ARDAGH'S PROPERTY AND INTELLECTUAL PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights, patents, trademarks or any other forms of intellectual property rights including, without limitation, in all drawings, specifications and data supplied by Ardagh to the Supplier or created by either party specifically in the manufacture of the Goods or performance of the Services under any Contract shall at all times be and remain the exclusive property of Ardagh but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to Ardagh and shall not be disposed of other than in accordance with Ardagh's written instructions, nor shall such items be used otherwise than as authorised by Ardagh in writing.

#### **13. TERMINATION**

13.1. To the extent this Contract does not focus solely on the sale of Goods, Ardagh shall have the right at any time and for any material reason to terminate the Contract in whole or in part by giving notice in writing to the Supplier whereupon all work on the Contract shall be discontinued and Ardagh shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss. Neither this clause nor any other provision in these GTC limits

liability for cases of intent and gross negligence or for cases of injury to body, health or life. Likewise, liability for material contractual obligations is not limited.

13.2. Ardagh shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith without any compensation to be paid to the Supplier if:

- a) the Supplier commits a material breach of any of its obligations under the Contract;
- b) any distress, execution or other process is levied upon any of the assets of the Supplier;
- c) the Supplier enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up or if a petition is presented to court, or if a receiver and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;
- d) the Supplier ceases or threatens to cease to carry on its business;
- e) the financial position of the Supplier deteriorates to such an extent that in the opinion of Ardagh the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- f) Ardagh reasonably apprehends that any of the events mentioned above is to occur in relation to the Supplier.

13.3. Termination of the Contract shall not release either party from any liability that has already accrued prior to termination. The Conditions which expressly or impliedly have effect after termination, including without limitation clauses 9, 10, 11, 12, 15, 18 and 19 will continue to be enforceable notwithstanding termination.

#### **14. ASSIGNMENT**

14.1. The Supplier shall not be entitled to assign or transfer any of its rights, benefits or obligations under any Contract without the prior written consent of Ardagh.

14.2. Notwithstanding the above, Supplier shall at all times remain fully responsible and liable for the execution of this Agreement and the obligations contained herein.

14.3. Ardagh may assign the benefit of any Contract to any other party and its obligations thereunder to any Affiliate at any time.

#### **15. COMPLIANCE**

15.1. The Supplier and anyone acting on its behalf shall at all times comply with:

- a) Ardagh's Code of Conduct, including but not limited to its Anti-Bribery Policy (Appendix 5) and Ardagh's Responsible Procurement Policy available at <https://www.ardaghgroup.com/corporate/media-centre> under the "Policies" tab, and
- b) all applicable laws related to bribery, corruption and related matters, including without limitation the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010 as well as the laws relating to bribery and corruption in force in all relevant jurisdictions to the Contract.

15.2. The Supplier shall report any breach or potential breach of this Article 15 in writing to Ardagh as soon as it becomes aware of them. Any breach of this Article 15 shall be deemed a material breach of this Contract.

15.3. The Supplier shall:

- a) keep accurate and complete records of all expenditure related to this Contract and allow Ardagh and Ardagh's advisors and auditors and any regulatory or public authorities to audit all such records at any reasonable time;
- b) promptly answer, in reasonable detail, any written or oral queries from Ardagh related to the Supplier's compliance with this article 15, including but not limited to any due diligence questionnaire which would be required as part of Ardagh's responsible procurement program;

- c) ensure that all of its suppliers, sub-agents and sub-contractors who perform Services or provide Goods in connection with this Contract do so on the basis of a written contract which imposes on and secures from such persons equivalent terms to those expressed in this article 15, and
  - d) otherwise represent, warrant and covenant compliance with the policies listed in article 15.1 above.
- 15.4. The Supplier shall report any breach or potential breach of this article 15 in writing to Ardagh as soon as it becomes aware of them. Any breach of this Article 15 shall be deemed a material breach of this contract, which shall trigger a right to terminate this contract in accordance with article 13.2.

**16. DATA PROTECTION**

The personal data of the Supplier shall be collected and processed in accordance with the EU Regulation 2016/679 together with any other related legislation, as updated. For additional information on personal data processing please see [www.ardaghgroup.com/privacy-statement](http://www.ardaghgroup.com/privacy-statement).

**17. FORCE MAJEURE**

Ardagh reserves the right at its sole discretion to suspend or terminate the Contract in whole or in part or defer the date of delivery of the Goods and/or Services or payment without being liable for any loss, damage or expense arising from such suspension, termination if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Ardagh including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic or pandemic, lock-outs, strikes or other labour disputes, changes in export control and economic sanctions laws, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials without being liable for any loss, damage or expense arising from such deferral, cancellation or reduction.

**18. GOVERNING LAW AND JURISDICTION**

The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by, and interpreted in accordance with, the laws of Germany, excluding the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods. The Courts of Hamburg shall have exclusive jurisdiction over any dispute arising out of or in connection with the Contract.

**19. SEVERABILITY**

Should any provision of these GTC be or become invalid, ineffective or unenforceable as a whole or in part, the validity, effectiveness and enforceability of the remaining GTC shall not be affected. Ardagh and the Supplier undertake to agree a provision in place of the invalid or unenforceable contractual provision which comes as close as possible to the economic objectives of the contracting parties as they existed at the time of the conclusion of the Contract. The decisive factor shall be what the contracting parties would have agreed if they had recognised the impracticability or invalidity. The same shall apply in the event of the existence of a contractual loophole.