

## GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1 DEFINITIONS

The following definitions and rules of interpretation shall apply:

**Ardagh:** the relevant Ardagh group company supplying the ordered Goods or as otherwise stated to the Buyer in writing.

**Buyer:** the legal entity who has bought, or agreed to buy, the Goods.

**Call Off Period:** has the meaning set out in clause 3.4.

**Delivery Date:** the date specified for delivery as agreed by Ardagh in writing.

**Goods:** any item sold by Ardagh.

**Insolvency Event:** the Buyer becoming insolvent or bankrupt or entering into receivership, administration, liquidation or a composition, compromise or an arrangement to reschedule or restructure its indebtedness; the Buyer suspending or ceasing, or threatening to suspend or cease, carrying on its business (or any part of it) or payment of its debts or being unable to pay its debts as they fall due; a resolution being made in connection with the winding up or dissolution of the Buyer; the Buyer obtaining a moratorium; the Buyer having an administrator, receiver, liquidator or manager appointed over the whole, or a substantial part, of its undertaking or assets; or any steps being taken in preparation for the foregoing (whether voluntarily or otherwise); or any event occurring in any jurisdiction to which the Buyer is subject that has an effect equivalent or similar to any of the above.

**Order:** an order for Goods placed by the Buyer and accepted in writing by Ardagh or otherwise deemed accepted by Ardagh upon delivery of the Goods.

The word "including" will be deemed to be followed by the words "without limitation".

### 2 OFFER AND ACCEPTANCE

2.1 Offers by Ardagh are non-binding. The Buyer may submit a proposed order to Ardagh verbally or in writing. Such proposed order shall be deemed to be an offer by the Buyer to purchase Goods in accordance with these terms.

2.2 Each proposed order shall only be deemed accepted once confirmed in writing by Ardagh or, if earlier, when the Goods are delivered to the Buyer (in whole or in part). Upon Ardagh's acceptance of an order for the purchase of Goods, a contract shall be formed incorporating these terms and the terms specified in Ardagh's written confirmation of the Order (**Contract**). Any terms specified in Ardagh's written confirmation of the Order shall take precedence over these terms in the event of a conflict.

2.3 The terms of the Contract constitute the entire agreement between the parties and supersede all other terms that may apply to the sale of Goods to the Buyer to the exclusion of all other terms including any quotation, acceptance, acknowledgement, specification or other communication. All descriptions and statements contained in Ardagh's promotional literature and samples are approximate only and shall not form part of the Contract. No modification or amendment of these terms will be binding unless agreed to in writing by Ardagh.

### 3 DELIVERY OF GOODS

3.1 Unless otherwise stated in Ardagh's written confirmation of the Order, delivery of the Goods shall be FCA (Incoterms 2020) at Ardagh's premises.

3.2 Subject to the remainder of this clause, the Delivery Date (including time of delivery) shall be an estimate only and time shall not be of the essence. The Buyer may only reject a delivery as late or assert any other claim based on a delay if: (i) a binding delivery time has been expressly agreed in writing by Ardagh; and (ii) Ardagh fails to deliver within 14 days after such binding Delivery Date.

3.3 Ardagh shall be permitted to deliver quantities of Goods up to ten per cent (10%) above or below the ordered quantity. In such event, the price shall be adjusted accordingly.

3.4 Goods may be ordered on a "call-off basis" if agreed by Ardagh in writing (meaning Ardagh shall commit to delivering an agreed quantity of Goods at such times as may be required by the Buyer). If the Buyer does not instruct and accept delivery of any ordered Goods within three months after the date of manufacture or such other period as may have been agreed in writing (**Call Off Period**), Ardagh shall be entitled to invoice the Buyer for the undelivered quantity of the Goods and demand that the Buyer immediately take delivery of them, failing which Ardagh may, without prejudice to its right to payment, dispose of the Goods at Buyer's cost or charge to the Buyer all storage costs incurred for so long as the Goods remain in Ardagh's possession. Ardagh shall not be liable for any deterioration or contamination of the ordered Goods or of their packaging arising during storage or handling after the end of the Call Off Period.

3.5 Ardagh shall be entitled to make deliveries in instalments and each instalment may be invoiced separately.

### 4 RETURNABLE PACKAGING

4.1 Pallets and other packaging materials are returnable if clearly marked as returnable in the Contract or on the invoice for the Goods (**Returnable Packaging**). Returnable Packaging shall at all times remain the property of Ardagh or the respective owner, as the case may be.

4.2 Unless otherwise agreed in writing, the Buyer shall pay to Ardagh a pallet deposit according to Ardagh's pallet deposit rate applicable on the earlier of: (i) the date of despatch of the Goods; and (ii) the date of invoice. Such deposit will be invoiced together with the Goods.

4.3 Ardagh shall refund the pallet deposit if the Buyer returns the Returnable Packaging to Ardagh: (i) not later than three months after delivery; and (ii) in good condition being suitable for immediate reuse by Ardagh. The Buyer shall at its own cost return the Returnable Packaging from time to time as agreed with Ardagh or as requested by Ardagh.

### 5 PRICE AND PAYMENT

5.1 The price payable for the Goods will be as agreed by Ardagh in writing.

5.2 Unless otherwise agreed in writing, the price excludes value added tax and any other tax, duty, fee, charge or levy which the supplier incurs or is responsible for relating to the production and/or supply of the Goods. Delivery costs shall be charged

to the Buyer for Goods supplied on a delivered basis. All amounts referred to under this clause shall be invoiced to and payable by the Buyer.

5.3 Prices are subject to change for future costs at Ardagh's due discretion at any time prior to delivery or invoicing of the Goods (whichever is earlier) to reflect changes in applicable laws or introduction of new laws, increases in taxes, duties, levies, charges, fees and tariffs, foreign exchange fluctuations and increases in the costs of production, material, labour, freight and energy.

5.4 Invoices shall be issued on or after delivery or in accordance with clause 3.5, save where Ardagh requires payment on account in advance of delivery. Invoices shall be payable within 30 days of the invoice date by electronic bank transfer to the account and in the currency stated on the invoice. Any queries must be raised with Ardagh in writing within 10 days of receipt. The Buyer shall pay interest on any outstanding and due amount at the rate of three per cent above the three months Euribor rate from the due date until the date of payment. The Buyer shall only be entitled to receive bonuses, rebates or other price reductions which may have been agreed with Ardagh all payments are received by Ardagh by the due date. Ardagh may require payment on account in advance of delivery and issue an invoice at any time.

5.5 Time for payment is of the essence. If the Buyer fails to pay any amount on the due date for payment, Ardagh may, without liability, suspend delivery or performance of any Order (or any part of it or instalment or any call-off order) not yet fulfilled and require immediate payment of all outstanding amounts. Additionally Ardagh may refuse to accept any further proposed orders from the Buyer, which also applies if the Buyer enters into (or becomes reasonably likely to enter into) an Insolvency Event.

5.6 The Buyer shall pay all amounts due in full without any deduction, set-off, counterclaim or withholding, unless a deduction or withholding of tax is required by law (in which case the Buyer shall pay such sum to ensure Ardagh receives the full amount invoiced).

### 6 TITLE AND RISK

6.1 Risk in the Goods shall pass to the Buyer upon the earlier of delivery and the end of the Call Off Period.

6.2 Notwithstanding delivery, title to the Goods shall not pass to the Buyer until the earlier of: (i) receipt of full payment for the Goods, in which case title shall pass at the time of payment; (ii) use or filling of the Goods by the Buyer; (iii) damage to the Goods after risk in the Goods has passed to the Buyer (such that the Goods are no longer in their original condition); or (iv) the date notified to the Buyer by Ardagh in writing. If sub-clause (ii) or (iii) applies, title shall pass at the time specified in clause 6.4.

6.3 Until title to the Goods passes to the Buyer, the Buyer shall:

- (i) store the Goods separately and mark or identify the Goods as belonging to Ardagh;
- (ii) not encumber, charge or grant security over such Goods;
- (iii) notify Ardagh immediately if the Buyer becomes subject to an Insolvency Event;
- (iv) provide such information relating to the Goods as Ardagh may require from time to time;
- (v) at Ardagh's request, deliver up all Goods in the Buyer's possession; and
- (vi) permit Ardagh, and grant Ardagh an irrevocable licence, to enter any premises where the Goods are stored (at any time and without notice) to inspect and/or repossess the Goods.

6.4 Subject to clause 6.5, the Buyer may use or fill the Goods in the ordinary course of its business before title passes; however, if it does so: (i) it shall act as principal and not as Ardagh's agent; and (ii) title to the relevant Goods shall pass to the Buyer immediately before the use or filling. If the Goods are damaged after risk has passed, title shall pass to the Buyer immediately prior to the occurrence of such damage.

6.5 If before title passes to the Buyer, the Buyer becomes subject to an Insolvency Event, without limiting any other right or remedy, the Buyer's right to use or fill the Goods in the ordinary course of business ceases immediately and Ardagh may at any time: (i) require the Buyer to deliver up all Goods in its possession; and (ii) enter any premises where the Goods are stored and recover them.

### 7 RESPONSIBILITY FOR DEFECTS

7.1 Subject to reasonable manufacturing variations and tolerances, upon delivery (or, if earlier, at the end of the Call Off Period) the Goods shall comply with Ardagh's specification for such Goods in all material respects and shall be fit for the purposes, in each case, as expressly agreed in writing.

7.2 Save as set out in clause, all warranties, representations and guarantees as to the quality of the Goods, their fitness for a particular purpose, their correspondence with descriptions or samples (including with promotional materials or samples provided by Ardagh), their life or their wear, whether express or implied and whether on the basis of common law, statute, trade customs, conduct of the parties or otherwise, are hereby expressly waived and excluded.

7.3 Ardagh makes no warranty, representation or guarantee that the Goods shall be suitable for the purpose of being filled with specific items; the shelf life of the Goods or of any items contained within the Goods; that the Goods will comply with foreign laws; nor that the Goods once filled or otherwise used will comply with applicable laws (including foreign laws) or regulations relating to their sale to the public. The Buyer acknowledges and agrees that it is the Buyer's responsibility to review and validate the shelf life and suitability of any ordered Goods in the context of their specific use and filling.

7.4 If the Goods do not comply with the requirements of clause in any material respect (**Non-Conforming Goods**), Ardagh's liability for such non-compliance shall be limited in accordance with this clause 7 and clause 8 below. The Buyer shall not return any Non-Conforming Goods to Ardagh without Ardagh's prior written consent.

7.5 Prior to the Goods being filled and subject to clauses 7.6 to 7.9 and 8 and Ardagh having had the opportunity to inspect the Non-Conforming Goods and confirm the defect, Ardagh shall at its sole discretion, and as Buyer's sole remedy, either replace or repair any Non-Conforming Goods or refund their purchase price. The Buyer shall not return any Goods to Ardagh without Ardagh's prior written consent.

7.6 Once the filling process has commenced, Ardagh shall only be liable for Non-Conforming Goods if:

- (i) the Buyer has used an adequate product traceability system and followed an adequate "First In First Out" filling order procedure resulting in a homogeneous batch of Goods being filled;
- (ii) the Buyer has complied with its inspection and notice obligations pursuant to clauses 7.8 and 7.9;
- (iii) a representative of Ardagh has had the opportunity to inspect the Non-Conforming Goods and confirmed the defect;

7.7 Ardagh shall not be liable for: (i) any defects resulting from the use of materials or specifications provided by the Buyer to Ardagh for the purpose of performing the Contract; (ii) any defect, damage or loss caused by accident, neglect or improper use by the Buyer or its agents; (iii) any defect, damage or loss caused by accident or neglect after risk has passed to the Buyer in accordance with clause 6.1.

7.8 Immediately upon delivery, the Buyer shall inspect the Goods. Such inspection shall include reasonable incoming Goods inspections at the Buyer's facility. Depending on the practice in the relevant industry, the reasonable incoming Goods inspection may include an exterior inspection of batches of Goods immediately upon receipt and a detailed inspection of single Goods during subsequent filling and processing. The Buyer shall make reasonable efforts to ensure that defective Goods are removed before and during filling and processing by providing for short interval intermediate in-line and off-line process control verifications and suitable installed devices.

7.9 Ardagh shall have no liability whatsoever under this clause 7 or otherwise for Non-Conforming Goods unless Ardagh receives a written complaint with detailed description of the defect or shortage within the following time periods:

- (i) in respect of any shortage or defect which would be apparent from a reasonable incoming Goods inspection as described in clause 7.8, as soon as possible after delivery or, if earlier, the end of the Call Off Period (and in any event within three business days);
- (ii) in respect of any defect which is not apparent from a reasonable incoming Goods inspection, as soon as possible after such defect becoming apparent, provided that the Goods shall be deemed accepted in any event if Ardagh has not received a complaint within 12 (twelve) months after their delivery (or, if earlier, within 12 (twelve) months of the end of the Call Off Period).

7.10 The Buyer acknowledges it does not rely on, and shall have no remedies in respect of, any other statement, representation, assurance or warranty (whether made innocently or negligently) save as expressly set out above.

## **8 LIABILITY**

8.1 Subject to clause 8.3, Ardagh shall under no circumstances whatsoever be liable to the Buyer in contract, tort (including negligence) or otherwise for any third party loss, loss of profit, loss of production, loss of goodwill, loss of business or loss of opportunity and/or for any indirect or consequential loss, incidental, special or punitive damages arising under or in connection with the supply, use and/or sale of Goods and/or the Contract.

8.2 Ardagh's total and aggregate maximum liability per calendar year to the Buyer in respect of all losses arising under or in connection with the supply of Goods and/or the Contract, shall be limited to the lower of (i) 25% of the total price paid for the Goods under the Contract by the Buyer in the calendar year in which such liability arose, and (ii) EUR €2,000,000.

8.3 All regulations in these General Terms and Conditions, in particular the liability regulations in clauses 7 and 8, shall only apply subject to the following conditions:

- (i) Ardagh is liable for damages caused by slight negligence if the infringing act attributable to Ardagh constitutes a breach of cardinal obligations, whereby cardinal obligations are the essential obligations which form the basis of the particular Contract, which were decisive for the conclusion of the particular Contract and on the fulfilment of which the Buyer may rely.
- (ii) In any case, i.e. irrespective of other regulations in these terms, Ardagh is liable without limitation for damages caused intentionally or by gross negligence as well as for damages resulting from injury to life, body or health by Ardagh, its legal representatives or vicarious agents.
- (iii) Ardagh is liable for product liability damages according to the regulations of the product liability act ("Produkthaftungsgesetz").

## **9 TERMINATION**

9.1 Without prejudice to any other right or remedy, Ardagh shall be entitled to terminate a Contract and/or cancel any Order or instalment immediately upon written notice, without liability, if: (i) the Buyer fails to make a payment in full on the due date for payment; (ii) the Buyer commits any other breach of a Contract; or (iii) the Buyer suffers an Insolvency Event.

9.2 Ardagh shall have the right at any time to terminate any Contract with the Buyer and/or cancel any Order or instalment or call-off order on providing at least thirty days' prior written notice to the Buyer.

9.3 Upon termination or cancellation, clauses which expressly or by implication survive termination or cancellation shall continue in full force and effect.

## **10 PROPERTY AND INTELLECTUAL PROPERTY**

10.1 All rights and title in and to any moulds, tools, designs, models, sketches, printing plates, screens, negatives, quality and production data, specifications for the Goods and all other materials and information provided by the Buyer, including all intellectual property rights relating thereto, shall remain vested in Ardagh. Ardagh shall own all intellectual property and work results which are created in the performance of a Contract, including with respect to any Goods, any processes used or developed under a Contract or any moulds or tools used in the manufacture of the Goods.

10.2 The Buyer hereby grants Ardagh a royalty-free, sub-licensable, worldwide licence to use any designs, specifications and materials supplied to Ardagh by or on

behalf of the Buyer, solely for the purpose of supplying the Goods to the Buyer pursuant to the Contract.

10.3 The Buyer hereby indemnifies and shall keep the Ardagh group of companies indemnified on demand from and against all claims and any losses, damages, expenses, penalties and costs suffered or incurred by any member of the Ardagh group as a result of or in connection with any breach or infringement of third party rights (including patent rights, rights in design, trademark rights and copyrights), to the extent such breach or infringement is caused (directly or indirectly) by any designs or specifications or materials provided by the Buyer to Ardagh for the purposes of performing the Contract.

## **11 FORCE MAJEURE**

Ardagh shall not be in breach of Contract or be liable for any delay in performing or failure to perform any of its obligations due to circumstances beyond its reasonable control, including but not limited to interruption or failure of a utility service or transport network; act of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; war or armed conflict, terrorist attack, riot or civil unrest; nuclear, chemical or biological contamination; malicious damage or sabotage; damage to property; governmental action or intervention, including a lockdown or import/export restrictions; compliance with applicable law; breakdown of plant or machinery; collapse of buildings, fire, explosion or accident; restrictions on energy supply; labour or trade disputes, strikes, industrial action or lockout; non-granted permission; extreme transport or weather conditions; and/or non-performance by suppliers. Ardagh shall inform the Buyer promptly of the force majeure event and shall use reasonable endeavours to mitigate the effect of force majeure on the performance of its obligations.

## **12 CONFIDENTIALITY**

Each party shall keep all information which it has obtained from the other party in connection with the Contract confidential. The confidentiality obligation shall not apply to information that: (i) is required to be disclosed by law, court order or any governmental or regulatory authority; (ii) is already known to the receiving party at the time of disclosure by the disclosing party; or (iii) is or becomes generally available to the public other than through any act or omission of the receiving party in breach of a Contract. Further, Ardagh shall be entitled to disclose confidential information as provided for in clause 13.3 in connection with an initial public offering, a financing, a sale of shares in, or the assets of, Ardagh and/or any of its affiliates.

## **13 GENERAL**

13.1 Should a provision, a part of a provision or several provisions of these General Terms and Conditions be or become invalid or should a loophole be found in these, this shall not affect the remaining provisions herein. The ineffective provision or the loophole shall be replaced by a provision which the parties would agree upon according to the economic intention of these General Terms and Conditions if the ineffectiveness or the loophole had been considered.

13.2 No failure or delay in exercising (or exercising in full) any right or remedy shall constitute a waiver or abandonment of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

13.3 Ardagh may assign, novate, charge, sub-contract or otherwise transfer the Contract and/or its rights and obligations arising under or in connection with it in whole or in part at any time and on more than one occasion to any member of Ardagh Group (a member of Ardagh Group being any company, directly or indirectly, owned or controlled by or under common control with Ardagh Group S.A.). Further, Ardagh may assign its rights under the Contract or any of the rights arising under or in connection with it, in whole or in part, at any time and on more than one occasion to a reputable provider of finance. In connection with the foregoing, Ardagh may disclose to such Ardagh Group member or finance provider the terms of the contractual arrangements between Ardagh and the Buyer. By entering into the Contract, the Buyer confirms its consent to such assignment, novation, sub-contracting or other transfer.

## **14 GOVERNING LAW AND JURISDICTION**

14.1 The Contract and any dispute or claim (including disputes or claims relating to non-contractual obligations) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of Germany, excluding the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

14.2 The courts of Germany shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract, its subject matter or formation. In any case, the courts of the district court of Frankfurt am Main shall have local jurisdiction, i.e. in particular also if no other local jurisdiction in Germany results from the law.

## **15 COMPLIANCE**

15.1 The Buyer, and anyone acting on its behalf, shall at all times comply with:

- (a) Ardagh's Code of Conduct (available at <https://www.ardaghhmetalpackaging.com/corporate/code-of-conduct/>)
- (b) Ardagh's Anti-Bribery & Corruption Policy and all applicable laws related to bribery, corruption, the facilitation of tax evasion and related matters, including without limitation the US Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 and the UK Criminal Finances Act of 2017, as well as the laws relating to bribery and corruption in force in all relevant jurisdictions to the Agreement;
- (c) all laws and regulations (including those issued by a Sanctioning Authority (as defined below)) related to export control and sanctions and related matters; and
- (d) all other relevant laws, including but not limited to competition and anti-trust laws and human rights.

15.2 For the purposes of this clause, "Sanctioning Authority" means the United Nations, European Union, United Kingdom, United States of America or any other applicable competent authority or government and "Sanctioned Party" means any persons, entities or bodies designated by a Sanctioning Authority.

15.3 The Buyer (including any of its subsidiaries, or other group companies (including any immediate or ultimate parent company or any company under common control with such parent company or companies) directors, officers, employees, managers), and anyone acting on its behalf, each warrant at the date of the Contract and throughout its duration that they are not a Sanctioned Party.

15.4 The parties shall comply with all applicable laws and regulations for the export, import and/or transfer of the Goods and obtain all necessary approvals and documentation. The parties agree that the delivery of the Goods under the Contract will only be made where they are not legally prohibited and do not violate sanctions and export control laws and regulations (including embargoes and sanctions imposed by a "Sanctioning Authority").

15.5 Before the delivery of the Goods, Ardagh is entitled to request and the Buyer must promptly provide appropriate evidence, information and documents (e.g., end-use certificates, license-approvals or permits from the competent national authority, information about the final destination and intended use of the Goods or provided services, etc.) to demonstrate its compliance with the obligations under this clause. Until the receipt of suitable evidence, Ardagh is entitled to postpone the delivery of the Goods to the Buyer (or a consignee of the goods or services).

15.6 In all cases, the Buyer (and where relevant, the consignee of the delivered Goods) shall comply with all sanctions and (re-)export control laws and regulations (including any embargos issued by a Sanctioning Authority) when: reselling, transferring or otherwise providing Ardagh's products to third parties, brokering contracts for such goods, and/or providing other economic resources in connection with such goods.

15.7 The Buyer shall immediately report any breach or potential breach of this clause in writing to Ardagh as soon as it becomes aware of it and provide its full cooperation in respect. Any breach of this clause shall or may be deemed a material breach of the Contract and Ardagh may immediately suspend performance under the Contract, terminate the Agreement and/or claim damages resulting from the breach.

15.8 The Buyer may raise any questions or concerns regarding the topics covered by this clause 15 by contacting its business partner(s) in Ardagh; or by emailing Ardagh's Group Legal & Compliance department at [compliance@ardaghgroup.com](mailto:compliance@ardaghgroup.com); or via Ardagh's Speak-Up Hotline (further details are available on Ardagh's website). Any concerns raised shall be treated as confidential, and anonymity can be retained where permitted by law.

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