

# General Terms & Conditions of Purchase of Villeroy & Boch (Date January 2019)

## § 1 General – Scope

(1) Our General Terms & Conditions of Purchase shall apply exclusively, any terms of the supplier which contradict or are variance hereto will not be recognised by us, unless we have given express written approval for the application of such. Our Purchase Conditions shall apply even if we unconditionally accept any delivery of the supplier with knowledge of conditions conflicting or varying from our Purchase Conditions.

(2) All agreements made between us and the supplier in relation to the performance of the contract at the time of conclusion of the contract must be recorded in writing in the contract for evidentiary purposes. Our employees are not authorised to enter into any oral agreements at variance hereto.

(3) Our General Terms & Conditions of Purchase apply only to commercial enterprises in terms of §14 Civil Code (BGB).

## § 2 Orders

(1) Our orders are generally generated electronically and are therefore valid even without a signature.

(2) Our order may be accepted by written confirmation within a period of 3 working days. If this does not occur, after the expiry of this period we shall no longer be bound by the order.

## § 3 Prices – Payment – Set-off

(1) The price detailed in an order is binding. Unless there is a written agreement to the contrary, the price shall include delivery DDP (Delivered Duty Paid as per Incoterms 2010) to the destination named in the order including packing and other additional costs.

(2) The standard currency for transactions shall be EURO (€), unless another currency is detailed in our order.

(3) The content of any invoice must satisfy the legal requirements for such. Any invoice must contain a reference to the SAP order no. as well as the delivery note no. or the service entry sheet no. Invoices must be sent in digital form to the e-mail address specified on the order underneath the invoice address. In this regard digital invoices can be processed only in \*.pdf or \*.tif formats and individual \*.pdf and \*.tif files may each contain only one invoice. An unlimited number of files may be attached to each incoming email. The correct email address for digital invoices is the invoice address detailed in the order.

Printed invoices (hardcopy) are also to be sent to the invoice address provided in the order.

(4) Unless agreed otherwise, we will pay within 30 days, without any deductions. If, in specific cases a shorter period is agreed, payment will be made with a 3% early payment discount (*Skonto*). The payment deadlines are calculated from the time of receipt of the due contractual performance and receipt of a proper invoice. In case of any acceptance of an early delivery, the respective payment period shall be calculated as from the agreed original delivery date.

(5) We shall retain any rights of set-off or retention to the extent allowed by law. The supplier may set-off any claim against Villeroy & Boch only in so far as such claim is undisputed or have been established as final and absolute. This shall not apply to any set-off in relation to any other counter-claim where such is connected to the main claim by way of a reciprocal contract with mutual dependency ("synallagmatic").

(6) The supplier is not entitled to assign any claim against us to a third party without our approval.

## § 4 Delivery Time – Default Delay in Delivery

(1) The delivery time set out in the order shall be binding.

(2) Partial deliveries will be accepted only after prior express agreement.

(3) The supplier shall notify us in writing without undue delay if any circumstances occur or become foreseeable which could result in the agreed delivery time not being met. Any liability in relation to default delay shall not be affected hereby.

(4) In case of default delay, we shall be entitled to claim a contract penalty for each working day of delay at the rate of 0.3% of the net price of the goods delivered late, but not exceeding a total of 5% of the net price. The claim for a contractual penalty shall remain intact even if there is an unconditional acceptance of the delayed performance, provided that such a penalty is claimed not later than the date of the payment of the purchase price or - in case of any agreed partial delivery- the time of the payment of the final instalment. Further claims for damages shall not be affected hereby, taking into account any contract penalty paid.

(5) In case of any delay in delivery we shall also be entitled to statutory claims.

## § 5 Packaging / Accompanying Documentation

(1) The goods are to be packed so as to avoid any transport damage. Only environmentally-friendly packaging materials are to

be used. The supplier shall comply with all instructions of Villeroy & Boch in relation to the packaging and labelling of products. Unless agreed otherwise, the supplier is obliged to take back and dispose all transport packaging in a correct and proper manner and at its own expense.

(2) The supplier shall include any necessary documentation with each delivery (e.g. origin marking, declarations in connection with ROHS, REACH; declarations relating to customs etc.).

## § 6 Quality

(1) The supplier undertakes to supply all the goods delivered and/or services provided in accordance with the latest state of technology at the time of contract formation and according to the applicable provisions of law and the regulations and rules of the authorities, trade associations and technical bodies. The supplier shall advise us without undue delay of any future changes of which it becomes aware without undue delay.

(2) The supplier shall continuously monitor the quality of its products and upon request shall demonstrate the use of an adequate quality management system.

(3) If the delivered goods contain substances on the so-called "Candidate List of Substances of very High Concern" ("SVHC List") under REACH, the supplier shall give notice of such without undue delay. The requirement shall apply even if for current deliveries previously unlisted substances are added to the List. The current List can be accessed at [http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_table\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp). In addition, the deliveries shall not contain any asbestos, biocides or radioactive material.

(4) If we request a release sample, production shall commence only after written approval is given for the sample. Insofar as the supplier has any concerns in relation to the specifications provided, such shall be notified to us in writing without undue delay before the commencement of production or any delivery.

(5) We shall be responsible for inspecting the goods within a reasonable time period in relation to quantity, quality and obvious packaging defects. Any notice of defect shall be considered to be made in time if such is received by the supplier within 5 working days after receipt of the goods at the place of delivery or, in case of any hidden defects, from the date of detection.

## **§ 7 Proprietary Rights**

(1) The supplier shall deliver the goods free of any proprietary rights or other third party rights. If, by way of the supply of the goods and/or their use, any proprietary rights of third parties are infringed, the supplier shall undertake all reasonable efforts in order to obtain an unlimited right of use for us.

(2) If we are subject to any third party claim as a result of an infringement of proprietary rights, the supplier shall indemnify us from and against such claims unless the supplier can demonstrate, that the supplier is not responsible for the violation of the property law; we are not entitled to enter into any settlement with a third party – without the approval of the supplier – in particular into any settlement.

(3) The supplier's duty of indemnification shall relate to all uses and applications necessarily resulting in relation to us out of or in connection with a claim by a third party.

(4) The supplier may use trademarks, logos or other intellectual property of Villeroy & Boch only for the performance of the contract and only with our prior written approval.

## **§ 8 Defect Liability**

(1) Legal claims for damages shall be available to us without any limitations; we do not accept any limitations or exclusions of liability; in any case we are entitled to demand from the supplier at our choice either a rectification of the defect or the supply of replacement goods. The right to damages, in particular damages in lieu of performance is expressly reserved.

(2) We are entitled at the expense of the supplier to undertake any rectification of a defect ourselves if the supplier is in delay.

(3) The warranty period shall be 5 years in relation to any construction work and for any products which in their customary use are used in connection with a construction and which have caused a defect thereto; for all other products the warranty period shall be 36 months.

(4) The warranty period shall commence with the delivery of the subject matter to us or the third party nominated by us at the required place of receipt or use. For goods delivered which are to be assembled at the place of receipt or use, the limitation period shall commence upon complete assembly, in the case of agreed trial operations as soon as such are carried out without any objections. Insofar as acceptance is provided by law or contractually agreed, the limitation period shall commence upon successful acceptance. If the agreed assembly or the carrying out of the agreed trial operations or the contractually agreed acceptance is delayed without any fault of the supplier, the limitation period shall commence at the latest 6 months after delivery of the goods. § 640 section 1 Sentence 3 Civil Code (*BGB*) shall not be affected. If we are in default of acceptance,

the transfer of risk resulting therefrom shall be the key date for the commencement of the warranty period.

## **§ 9 Product Liability**

Insofar as any third party makes a claim against us on the basis of domestic or foreign product liability law and such relates to defects in the delivered goods or the cause is within the supplier's area of control or organisation and the supplier would be liable itself in relation to a third party, the supplier shall indemnify us from and against any such claims. In addition, the supplier shall maintain a reasonable product liability protection (minimum coverage € 5 million per event of personal injury / damage to property) and shall, upon request, provide evidence of such. The supplier shall bear all necessary costs arising out of or in connection with any necessary product recall. Any and all further statutory claims for damages shall not be affected hereby.

## **§ 10 Ownership - Copyright**

(1) Upon delivery or acceptance the goods shall become our property. Any products made available by us for the performance of the contract shall remain our property.

(2) The Supplier shall grant us for any performance subject to intellectual property law, exclusive, transferable, unlimited and indefinite rights of use.

(3) In relation to any tools which are produced at our costs especially for our orders, we reserve the ownership; the supplier shall continue to be obliged to use these tools exclusively for goods ordered by us and to clearly identify such as being our property. Malfunctioning of such tools shall be notified to us at once; if the supplier culpably fails to do so, the right to claim damages shall not be affected.

## **§ 11 Confidentiality**

The supplier shall treat all images, drawings, calculations and other documentation and information as strictly confidential. Such may be disclosed to third parties only with our express approval. This duty of confidentiality shall apply even after the completion of this contract; it shall end if and insofar as the images, drawings, calculations and other documentation containing production information become publicly known.

## **§ 12 References**

Any reference to our business relationship in advertising materials, reference lists or similar documentation shall require our prior written approval.

## **§ 13 Social Responsibility - Compliance**

The supplier shall be subject to the applicable and attached "Code of Conduct for Villeroy & Boch Suppliers".

## **§ 14 Data Protection**

The supplier agrees that we may electronically store and use the personal data, that is necessary within the framework of the business relationship and the contracts concluded with the supplier for our own purposes within our company group. Further agreements concerning data protection shall be entered into in separate agreements as necessary.

## **§ 15 Place of Jurisdiction – Place of Performance – Applicable Law**

(1) If the supplier is a merchant, our place of business shall be the place of jurisdiction; we are however entitled to issue legal proceedings against the supplier at the court of its place of residence.

(2) Unless indicated otherwise in the order, our place of business shall be the place of performance.

(3) The law of the Federal Republic of Germany shall apply with exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Law).