

## TERMS AND CONDITIONS OF SALE (AUS)

for 'small business contracts' and 'consumer contracts' as defined in the ACL

### 1 INTERPRETATION

In these terms and conditions:

- 1.1 'Amounts Owing' means all amounts owing by the Buyer and any of its Related Bodies Corporate to Sealed Air on any account or in any capacity;
- 1.2 'Buyer' means the persons (including its/their successors, personal representatives and permitted assigns) acquiring Supply from Sealed Air and where the Buyer is a company means that company and each of its Related Bodies Corporate. Where there is more than one Buyer, the covenants on their part contained herein shall be deemed to be joint and several covenants;
- 1.3 'Supply' means the goods to be supplied or services to be performed by Sealed Air under the Contract;
- 1.4 'equipment' means packaging or cleaning machinery and associated software (as applicable) as specified in the Quotation;
- 1.5 'goods' means all goods, equipment and other personal property to be sold, leased, hired or otherwise supplied by Sealed Air to the Buyer under the Contract
- 1.6 'Quotation' means the quotation issued by Sealed Air for each transaction incorporating Sealed Air terms and conditions specific to that supply including (a) terms for the supply of equipment by way of sale, lease or free on loan; and (b) any statement of work (SOW) describing services to be delivered (as applicable);
- 1.7 'Related Body Corporate' has the meaning it has in the Corporations Act 2001 (Cth);
- 1.8 'Sealed Air' means each of Sealed Air Australia Pty Ltd (ABN 65 004 207 532), Entapack Pty Ltd (ABN 86 006 471 209), and any other Australian affiliate of Sealed Air Corporation from time to time that submits the Quotation (as applicable);
- 1.9 'services' means the services to be performed under the Contract (and as described in a SOW incorporated into a Quotation);
- 1.10 'SOW' means a statement of work which describes goods and services to be supplied by Sealed Air; and
- 1.11 'Specification' means any specification, product information sheet or safety data sheet furnished by Sealed Air to the Buyer or referred to in the Quotation in respect of the Supply (if any).
- 1.12 The use of the word 'includes' or 'including' shall be interpreted to mean 'includes' or 'including without limitation'. A reference to '\$' or 'dollars' in the Contract is to Australian dollars (unless expressly stated otherwise).

### 2 CONTRACT

2.1 These terms and conditions apply to all contracts for the supply of goods or performance of services by Sealed Air to the Buyer (each a 'transaction') and supersede any purchase orders issued by the Buyer and all terms and conditions previously issued by Sealed Air. No contract for the supply of goods or services shall exist between Sealed Air and the Buyer except upon these terms and conditions, unless exclusion or modification is agreed to in writing by Sealed Air. Any order placed by the Buyer to Sealed Air for Supply and accepted by Sealed Air is deemed to be an order incorporating these terms and conditions, the Quotation and Sealed Air's order acknowledgement (if any) (collectively the 'Contract'). No order placed by the Buyer to Sealed Air will bind Sealed Air unless and until such order is accepted by Sealed Air in its absolute discretion.

### 3 ORDERS AND PRICE

3.1 Quotations are valid for 30 days. Sales are on a firm basis and no

returns will be accepted.

3.2 Placement of a purchase order by the Buyer must reference the applicable Quotation (if any) and is an acceptance of the Contract. Sealed Air reserves the right to accept a part only of any order by notifying the Buyer in writing. An order which has been accepted in whole or in part by Sealed Air cannot be cancelled or varied by the Buyer without obtaining the prior written approval of Sealed Air which it may refuse in its absolute discretion.

3.3 If (i) the Buyer has provided Sealed Air with a forecast of future requirements or (ii) the Supplier has manufactured goods based on production recommendations made by the Supplier to the Buyer then the Supplier shall be entitled to invoice, and deliver to, the Buyer all finished goods made to forecast / per recommendation (as applicable).

### 4 PAYMENT

4.1 Sealed Air will issue an invoice on delivery of the goods or performance of the services purchased. The Buyer must pay the entire amount of an invoice in immediately available funds according to the applicable credit terms granted. If credit terms are 30 days then payment must be by the last working day of the calendar month following the month in which the invoice was issued. Should the last day of the following calendar month fall on a weekend or public holiday, payment is required on the last working day of the month. Payments made under this clause must be made in full, without any set off, restriction, deduction, withholding or condition

4.2 If payment is not made in accordance with clause 4.1 Sealed Air will be entitled to calculate and charge interest at a rate of 12% per annum. Such interest shall be calculated from the date of notification of the overdue amount.

4.3 Default by the Buyer under these payment provisions entitles Sealed Air to demand full payment immediately, under any then current agreement between the Buyer and Sealed Air, failing which Sealed Air, in addition to any other course of action then available to Sealed Air, may elect to terminate all or any of those other agreements immediately by notice in writing to the Buyer

### 5 DELIVERY

5.1 Sealed Air must make all reasonable efforts to have the Supply delivered or performed on the date agreed between the parties as the delivery date, but Sealed Air shall be under no liability whatsoever should delivery not be made on this date.

5.2 Unless otherwise agreed, Sealed Air shall select the route and means of delivery of the goods to the premises of the Buyer or premises nominated by the Buyer.

5.3 If the preparation of the Buyer's order or the delivery of any Supply is suspended by the Buyer's instructions or failure to instruct, the price will be increased to cover any extra expenses incurred by Sealed Air directly or indirectly as a consequence of the instructions or failure to instruct. If the Buyer is unable to take the goods when they are ready for despatch then Sealed Air may invoice the Buyer for storage of such goods.

### 6 RISK

6.1 Risk in the goods shall pass to the Buyer upon delivery of the goods to the Buyer or the agent of the Buyer or to a carrier commissioned by the Buyer.

6.2 Following delivery, the Buyer must, at its own expense, insure the goods against storm and tempest, loss or damage by fire, accident or malicious or negligent damage or otherwise howsoever caused and the Buyer must maintain that insurance in the name of Sealed Air until title in the goods pass to the Buyer.

### 7 TITLE

The parties agree that the property in and title to the unused goods

remains with Sealed Air until all Amounts Owing have been paid in full and notwithstanding any intermediate payment in settlement of any particular account. Until all debts owing to Sealed Air by the Buyer have been paid in full, the Buyer is in a fiduciary relationship with Sealed Air and is a bailee only of the unused goods. Until such time as to all debts owing by the Buyer to Sealed Air have been paid in full, the Buyer is at liberty to sell the goods in the ordinary course of business as agent for Sealed Air and shall account to Sealed Air for the proceeds and shall hold such proceeds separately on trust for Sealed Air. This authority to use and sell the goods automatically terminates if the Buyer breaches these terms, the Buyer becomes insolvent or Sealed Air decides, in its absolute discretion, to revoke such authority. Upon termination of the authority granted, Sealed Air may take possession of any goods for which it has not yet received payment and enter any premises where such goods may be located.

### 8 SERVICES

8.1 The Buyer shall take all necessary measures to ensure that Sealed Air personnel are able to safely and expeditiously commence and carry out the services immediately upon their arrival on site including provide the relevant utilities services required to perform the services as advised by Sealed Air.

8.2 The Buyer must be responsible for the accuracy and completeness of the information supplied by the Buyer and its representatives. In the event of any error or omission in this information supplied, the Buyer shall be responsible and shall bear the cost of any alterations or variations required to the services.

### 9 TECHNICAL SPECIFICATIONS

9.1 Invoices, weights, gauges, sizes and tares of Sealed Air shall be treated as prima facie accurate and may vary from time to time as set out in the Specification.

9.2 Subject to clause 11, if any of the goods are found to not meet Specification due to reasons for which Sealed Air is responsible and the Buyer notifies Sealed Air in writing promptly upon becoming aware of the non-compliance and in any event within 90 days of delivery, clause 12.1(a) shall apply provided that (i) Sealed Air will not be liable for goods which have not been stored or used in a proper manner; (ii) the goods are returned in the condition in which they were delivered; (iii) the goods have not been sold on a non-returnable basis; and (iv) if the goods carry any expiry date, the goods have not expired.

### 10 FITNESS FOR PURPOSE

10.1 Subject to clause 11, the Buyer acknowledges that Sealed Air or a person purporting to act on its behalf has not made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Supply for any particular purpose or any other matter. The Buyer acknowledges that without relying upon the skills or judgment of Sealed Air or any person purporting to act on its behalf, it has determined that the Supply being acquired shall be fit for its purposes. Any description of the Supply is for identification only and shall not constitute a contract for the supply of the goods by description.

10.2 Buyer agrees that any advice or work provided by Sealed Air at no charge is provided on an 'as is' basis and Sealed Air shall have no liability to Buyer in respect of such advice or work whatsoever.

Technical advice given as part of a SOW will be warranted as set out in the SOW, but subject to these terms.

### 11 STATUTORY RIGHTS OF THE BUYER

11.1 The Contract shall not exclude or modify the rights, entitlements, remedies and liabilities of either party by any condition or warranty implied by any Commonwealth, State or Territory Act (including but not limited to the Australian Consumer Law ("ACL") set out in schedule 2 of the Competition and Consumer Act 2010 (Cth)) or any other law rendering void or prohibiting such exclusion or modification. Except to the extent that any such rights, entitlements, remedies and liabilities cannot be excluded or limited, all representations, terms, warranties and conditions not set out in the Contract in relation to the Supply including whether expressed or

implied by statute, common law or trade custom or usage or otherwise are hereby expressly excluded.

## **12 LIABILITY**

12.1 Notwithstanding any other provision of the Contract and to the extent permitted by law but subject to clauses 11 and 22.9:

(a) The liability of Sealed Air pursuant to clauses 9, 10 and 11 above shall be limited to, at Sealed Air's sole discretion, any one or more of the following: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; and/or (iv) the re-performance of the services (as applicable).

(b) Sealed Air (and its employees, affiliates, contractors and agents) shall under no circumstances be liable to the Buyer, its employees, affiliates, agents or contractors for any indirect or consequential loss or damages, loss of profits or revenue, production, contract, sales opportunity or business reputation, business interruption, loss or corruption of information or data, loss of expected savings, opportunity costs, loss or reduction of goodwill.

12.2 No warranty is given and no responsibility is accepted by Sealed Air to ensure that goods supplied under this agreement comply with any statutory requirements relating to the marketing of goods. Compliance with such legislation is the Buyer's sole responsibility. The limitations and exclusions of liability in the Contract shall apply whether the liability claim is based on negligence or other tort or breach of contract by Sealed Air, under statute, a warranty, an indemnity, in equity or otherwise

## **13 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

13.1 The sale to and the purchase by the Buyer of deliverables does not confer on the Buyer any licence or right under any copyright patent, design or trade mark or any other intellectual property right which is the property of Sealed Air which shall include all tooling, materials, dies, designs, moulds, software, industrial or intellectual property or the like used in the preparation for or production of or contained in any goods or provision of any services. Title to all intellectual property rights subsisting in the Supply (including designs, drawings and patents) shall remain the exclusive property of Sealed Air or Sealed Air's third party suppliers or licensors.

13.2 All drawings and Specifications furnished by Sealed Air to the Buyer are copyright, confidential and supplied for the sole purpose of the particular contract concerned. The Buyer may not make any copies or use for any purpose other than as expressly authorized by Sealed Air in writing or communicate any details of the drawing or technical specifications or any other sensitive information provided by Sealed Air to any third party without the prior written consent of Sealed Air. Sealed Air shall not be required to provide the Buyer with any manufacturing drawings, know-how, software source codes or details of manufacturing practices, processes or operations.

## **14 PRINTING, ARTWORK AND COMPOSITION**

Any printing, artwork or composition that may be required by the Buyer will be done or deemed to have been done upon the instructions of the Buyer and the Buyer shall be responsible for any resulting infringement of copyright, trademarks, patents or designs and any claims, costs, expenses, damages and liabilities that may result therefrom or any other Buyer-supplied information

## **15 TERMINATION**

If either party ("the defaulting party") (i) fails to observe or perform any of the terms of the Contract and (if the breach can be cured) has failed to rectify the breach within a reasonable time, or (ii) is insolvent, a resolution is passed or proposed or an application filed for the winding up of the defaulting party, or an administrator, receiver or receiver and manager, mortgagee in possession or other like officer is appointed in respect of the property or any part of the property of the defaulting party or the defaulting party is de-registered or the defaulting party makes or proposes to make an arrangement with its creditors, or the defaulting party is placed under

official management or execution is levied upon the assets of the defaulting party, the other party may at any time in its absolute discretion terminate the Contract in whole or in part or suspend performance under the Contract by notice in writing to the defaulting party but without prejudice to the other rights of the other party at law or under the Contract

## **16 FORCE MAJEURE AND FRUSTRATION**

Either party shall use all reasonable endeavours to fulfil its contractual obligations but if an event of force majeure occurs or the Contract becomes impossible to perform or is otherwise frustrated the parties shall be excused from its obligations hereunder without recourse from the other party (to the extent that the force majeure event affects them). An "event of force majeure" means anything outside a party's reasonable control including but not limited to fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage or epidemic, labour dispute, labour shortage, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies)

## **17 NOTICE**

A notice given by Sealed Air to the Buyer or the Buyer to Sealed Air must be in writing, be left at or sent by registered post or facsimile or email requesting receipt confirmation to the address in the applicable Quotation.

## **18 TAXES**

Unless otherwise stated, the prices quoted are exclusive of any taxes, including GST (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* as amended ('GST Act')). If the Supply being the subject of the quotation are a taxable supply for the purpose of the GST Act, in addition to paying for the goods, the Buyer must pay to Sealed Air the GST payable in respect of the taxable supply. If any other taxes are levied on the goods and services, these must be paid by the Buyer

## **19 QUANTITIES**

Sealed Air will use all reasonable endeavours to supply the quantity of goods ordered by the Buyer. However, good delivery shall be constituted when underage and overage is not more than 15%. The only exception to this percentage (unless otherwise stated in the Quotation) is for some small orders pertaining to the Sealed Air Division trading as 'Cryovac' where the allowable underage and overage shall be 25% of the quantity of goods ordered for:

(a) Barrier Bags, Casings, Pouches in quantities of less than 5,000 units; (b) Laminate Rollstock in quantities less than 250 kilograms; and (c) Tubing in quantities of less than 10,000 metres.

## **20 GOVERNING LAW AND DISPUTE RESOLUTION**

20.1 These terms and conditions are governed by the laws of Victoria, Australia excluding: (i) any conflict-of-laws provisions thereof that would otherwise require the application of the law of any other jurisdiction; and (ii) the United Nations Convention on Contracts for the International Sale of Goods (if applicable). The Buyer and Sealed Air agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and the courts of appeal from them.

20.2 If a difference or dispute arises between the parties arising out of or in connection with the Contract ('dispute'), the aggrieved party must send a written notice to the other party setting out the nature of the dispute, what outcome that party wants and what action they think will settle the dispute. The parties must use reasonable endeavours to resolve the dispute by mutual negotiation. If any dispute is not resolved within 28 days of the matter arising, either party may require the matter to be referred to mediation by notice to the other party setting out the general nature of the difference. If the parties fail to agree on mediation or settle the dispute by mediation within 28 days of the matter being referred to mediation, then either party may initiate litigation to resolve the dispute. Either party may take immediate steps at any time to seek urgent injunctive or equitable relief before an appropriate court.

## **21 PPSA**

21.1 The Buyer acknowledges that the Contract constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) ('PPSA'). Sealed Air takes a security interest in all goods supplied to the Buyer under the Contract and any proceeds and any accession that secures any money owing or payable by the Buyer to Sealed Air, securing the performance by the Buyer of its obligations under the Contract. Sealed Air's security interest in the goods and any proceeds is a Purchase Money Security Interest (PMSI) under the PPSA to the extent that it secures payment of any amount owing in relation to the goods. Sealed Air's security interest attaches to the goods when the Buyer obtains possession of the goods. The Buyer shall not create or cause to be created a security interest over, or in respect of its rights in, the goods other than the security interest arising under the Contract. The Buyer consents to Sealed Air perfecting its interest in any goods provided by Sealed Air to the Buyer by registration under the PPSA and agreed to do anything reasonably requested by Sealed Air to enable it to do so including, but not limited to, executing all documents and promptly informing Sealed Air of any change of name or other details of the Buyer.

21.2 To the extent permitted by law, the Buyer agrees to waive its rights under the PPSA to: (i) receive a copy of any verification statement; (ii) receive any notice that Sealed Air intends to sell the goods or to retain the goods on enforcement of the security interest granted under these terms; (iii) object to a proposal by Sealed Air to retain the goods in satisfaction of any obligation owed by Buyer to Sealed Air; (iv) receive a statement of account on sale of the goods; (v) retain the goods; and (vi) where any goods become an accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession.

## **22 GENERAL**

22.1 If one or more provisions of these terms and conditions is or becomes avoid, voidable or unenforceable for any reason, all other provisions shall remain in full force and effect.

22.2 No variation of this Contract is legally binding upon either party unless in writing and signed by both parties.

22.3 The Contract sets out the entire understanding between the parties with respect to the subject-matter contained in it.

22.4 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Contract or any part of it.

22.5 Sealed Air may, in its absolute discretion, sub-contract the Supply.

22.6 Neither party may assign, pledge or transfer its interest in the Contract (or any part of it) any of its rights or obligations hereunder without the prior written consent of the other (which shall not unreasonably be withheld).

22.7 Failure by Sealed Air to insist upon strict performance by the Buyer of any of these terms and conditions is not to be taken to be a waiver of any rights of Sealed Air and is not to be taken to be a waiver of these terms and conditions.

22.8 To the extent of any inconsistency between the Quotation and these terms and conditions, these terms and conditions shall prevail (provided however that where equipment-specific terms are attached to the Quotation, those terms shall take precedence in respect of the equipment).

22.9 To the extent that these terms and conditions are a "consumer contract" and/or a "small business contract" and/or a standard form contract (in each case within the meaning of the ACL), any term of these terms and conditions which would be void because the term is unfair or for any other reason: (a) must be read down to the extent necessary to avoid that result; and (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.