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 as Buyer’s sole and exclusive remedy for such non-compliance, 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 be returned in the condition in which they were delivered; (iii) 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 by the last working day of the following week. Payment under this clause must be made in full, without any set off, restriction, deduction, withholding or condition. 10.1 If Sealed Air are unable to honour any of its obligations under this clause the time for payment therein required shall be extended by the period of any such delay. 11.1 Sealed Air warrants that any Goods sold under these Terms and Conditions are free from defects and are of merchantable quality. 11.2 It is the Buyer’s responsibility to inspect the Goods upon delivery at the place of delivery and to give written notice to Sealed Air of any defects or non-conformity immediately upon becoming aware of such defects or non-conformity. 11.3 Sealed Air shall be liable for any defect or non-conformity in the Goods where the Buyer gives notice thereof within a reasonable time after discovery of such defect or non-conformity. 11.4 Sealed Air shall not be liable for any defect or non-conformity in the Goods, where the Buyer has failed to inspect the Goods upon delivery and where the Buyer shall have been aware of the possibility of such defects or non-conformity. 11.5 Sealed Air’s liability for any defect or non-conformity in the Goods shall be limited to the repair, replacement or refund of the Goods in respect of which the Buyer has given notice and for which Sealed Air, in its discretion, agrees to be responsible. 11.6 In the event that the Goods are found to be defective or non-conforming, the Buyer is required to give Sealed Air immediate written notice of such defect or non-conformity. 11.7 The Buyer agrees to keep the Goods in original condition and packings, and to give Sealed Air the opportunity to inspect the Goods in order to determine the extent of the defect or non-conformity. 11.8 If Sealed Air is unable to repair or replace the Goods within a reasonable time, or if it appears to Sealed Air that the Goods are irreparable or cannot be replaced by Goods complying with these Terms and Conditions, the Buyer may (but shall not be entitled to) return the Goods to Sealed Air, and all amounts due by the Buyer to Sealed Air under these Terms and Conditions shall be paid by the Buyer to Sealed Air in full. 11.9 Sealed Air shall not be liable to the Buyer for any loss or damage whether in contract or in tort (including negligence or otherwise) or for any special, indirect, consequential or other similar loss or damage suffered by the Buyer as a result of any defect or non-conformity in the Goods, and whether or not rooted in contract. 12.2 Without limiting clause 12.1(b), Sealed Air accepts no responsibility or liability for any loss or damage arising out of or in connection with any personal injury, illness or death caused to any property or any other loss or damage of any kind whatsoever caused by: (a) the Supply; and/or (b) the Buyer upon delivery of the Goods to the Buyer or its agent or by a carrier commissioned by the Buyer. 12.3 Sealed Air’s liability for any loss or damage arising out of or in connection with any personal injury, illness or death caused to any property or any other loss or damage of any kind whatsoever caused by: (a) any breach of any of these terms or conditions by the Buyer; (b) any injury or harm suffered by an employee, agent or contractor of Sealed Air on the premises of the Buyer or any other Premises employees, agents, contractors or subcontractors of Sealed Air; (c) any claim by any person in respect of or arising out of or in connection with any of the matters referred to in clause 12.2.
12.4 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 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 toolsing, 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 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 of 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 any such printing, artwork or composition will be at the Buyer’s cost and not the responsibility of Sealed Air. Sealed Air will use all reasonable endeavours to supply the quantity ordered by the Buyer. However, good delivery shall be constituted when unstacked and overage is not more than 15%. The only exception to this percentage (unless otherwise stated in the Quotation) is for some small orders, for which overage, where applicable, shall be 25% of the quantity of goods ordered for.

(a) Should Tee Bag, Casings, Pouches in quantities of less than 5,000 units; (b) Laminated Rolls in quantities less than 250 kilograms; and (c) Tubing in quantities of less than 10,000 metres.

15 TERMINATION

If the Buyer fails to observe or perform any of the terms of the Contract, or if the Buyer is insolvent, a resolution is passed or proposed or an application filed for the winding up of the Buyer, or an administrator, receiver or receiver and manager mortgage in possession of or other like officer is appointed in respect of the property or any part of the property of the Buyer or the Buyer loses or is de-registered or the Buyer makes or proposes to make an arrangement with its creditors, or the Buyer is placed under official management or execution is levied upon the assets of the Buyer, Sealed Air 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 Buyer but without prejudice to the other rights of Sealed Air under the Contract.

16 FORCE MAJEURE AND FRUSTRATION

Sealed Air 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, Sealed Air shall be excused from any obligations hereunder without recourse from the Buyer. The Buyer shall be liable to pay to Sealed Air all costs which suppliers or sub-contractors of Sealed Air have incurred directly or indirectly in respect of the goods which Sealed Air is liable under the contract at the time of an event of force majeure, frustration, impossibility of performance or delays caused by Buyer or its agents and contractors. Sealed Air shall not however require payment for any standard equipment or materials which Sealed Air’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 confirmation in the address applied 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 may be paid by the Buyer.

19 LIABILITIES

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

(a) Should Tee Bag, Casings, Pouches in quantities of less than 5,000 units; (b) Laminated Rolls 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 (1980) (CISG). 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 being referred to mediation, 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 to 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 equipment which equipment is secured by a security interest 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, without limitation, 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; or (ii) receive any notice that Sealed Air intends to sell the goods to or 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 under the contract; (iv) receive a statement of account 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 for the court to order the removal of the accession.

22 GENERAL

22.1 If one or more provisions of these terms and conditions is or becomes void, 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.