



TERMS AND CONDITIONS OF SALE

1 INTERPRETATION

In these terms and conditions:

- 1.1 'Amounts Owning' 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 offer 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 Companies Act 1993;
- 1.8 'Sealed Air' means each of Sealed Air (New Zealand), BluPack New Zealand, Diversey New Zealand Limited and any other New Zealand 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 New Zealand 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 is deemed to be an order incorporating these terms and conditions, the Quotation and Sealed Air's order acknowledgement (if any) (collectively the '**Contract**').

3 ORDERS AND PRICE

- 3.1 Quotations are valid for 30 days. Sales are on a firm basis and no returns will be accepted. Sealed Air may alter the price upon written notice to the Buyer of the new price as at the delivery date.
- 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.

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 on or before the 20th day of the month following the month in which goods were supplied where the Buyer has an existing account with Sealed Air or has arranged an account with Sealed Air, or otherwise in full on receipt of delivery of goods or completion of work. Should the 20th day of the following calendar month fall on a weekend or public holiday, payment is required on the last working day before the 20th. 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 15% per annum. Such interest shall be calculated from the due date of the invoice until the date payment is received.
- 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.

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 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 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 judgement 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 Statute 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:
- (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) (but subject to clause 12.1(a)) 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 direct, indirect, incidental or consequential damages, loss of profits or revenue, production, contract, sales opportunity or business reputation, direct or indirect labour cost and overhead expenses, business interruption, loss or corruption of information or data, loss of expected savings, opportunity costs, loss or reduction of goodwill, economic loss and damage to equipment or property or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the sale, delivery or performance of the Supply or the 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 to any person or damage to any property or any other loss or damage of any kind whatsoever caused by:
- (a) the Supply; and/or
- (b) the entry onto, and any activities undertaken on and in, Sealed Air's premises by the Buyer or its employees, agents, contractors or subcontractors.
- 12.3 The Buyer will indemnify Sealed Air and keep it indemnified from and against liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (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 or contractors of Sealed Air are required by the Buyer to attend; and
- (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 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 goods or services 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 communicate any details of the drawing or technical specifications to any third party without the prior written consent of Sealed Air and may not make any copies of or use the drawings or Specifications or any other sensitive information provided by Sealed Air for any purpose other than as expressly authorized by Sealed Air in writing. 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 assumes all liability and agrees to indemnify and hold Sealed Air harmless in respect of 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 the Buyer (i) fails to observe or perform any of the terms of the Contract, or (ii) 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, mortgagee in possession or other like officer is appointed in respect of the property or any part of the property of the Buyer or the Buyer 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 at law or 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 its obligations hereunder without recourse from the Buyer. The Buyer shall be liable to pay to Sealed Air all costs which Sealed Air and suppliers or sub-contractors of Sealed Air have incurred directly or indirectly or for 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 parts or materials which Sealed Air may be able to use at the time in any other contract then current. Any prepayments which may have been made to Sealed Air under the Contract shall be applied towards the satisfaction of such sum as may become due to it and the excess (if any) prepayment shall be refunded to the Buyer. An event of force majeure means anything outside 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 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 Goods and Services Tax Act 1985 ('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, except in respect of Diversey products, 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 New Zealand 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 New Zealand 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 grants a security interest to Sealed Air in each and every part of the unused goods as security for payment of that part and of each other part or parts of the unused goods and for any other amounts owing by the Buyer to Sealed Air from time to time, and for the performance by the Buyer of all the Buyer's other obligations to Sealed Air from time to time ("Buyer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the Personal Property Securities Act 1999 ("PPSA"), and to ensure maximum benefit and protection for Sealed Air by virtue of section 36(1)(b)(iii) of the PPSA, the Buyer confirms and agrees that the Buyer intends to and does grant to Sealed Air, as security for the Buyer's indebtedness and obligations, a security interest in all of the Buyer's unused goods except only for any such property which is or comprises items or kinds of personal property ("excepted property"):
- (a) in or to which the Buyer has rights; and
 - (b) which has not been supplied by Sealed Air to the Buyer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Sealed Air to the Buyer.
- 21.2 Sealed Air authorises the Buyer to sell or lease, in the ordinary course of business of the Buyer, any goods that are comprised in the Buyer's inventory, provided that such authority may be revoked by written notice from Sealed Air at any time if Sealed Air deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under this Contract or any other contract between Sealed Air and the Buyer, and shall be deemed automatically revoked if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors, or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Buyer or a receiver is appointed in respect of all or any assets of the Buyer.
- 21.3 Sealed Air may allocate amounts received from the Buyer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any goods. The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract. The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Buyer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 21.4 At any time after a default occurs, Sealed Air may (whether or not Sealed Air has exercised any other right) appoint any person to be a receiver of all or any of the goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the goods as if the receiver has absolute ownership of the goods. The Buyer undertakes to not register a financing change statement or a change demand without the prior written consent of Sealed Air.

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.
- 22.4 Sealed Air may, in its absolute discretion, sub-contract the Supply and assign, pledge or transfer its interest in the Contract (or any part of it) and any of its rights or obligations hereunder without the prior written consent of the Buyer.
- 22.5 The Buyer may not 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 Sealed Air.
- 22.6 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.
- 22.7 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).