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/s their successors, personal representatives and permitted assigns) acquiring Supply from Sealed Air and with whom Sealed Air has entered into a transaction to acquire the goods or services to be supplied by Sealed Air;

1.3 'Buyer's order' means the order and any subsequent order of the Buyer to which these terms and conditions apply; and

1.4 'Buyer's order acknowledgement' means the acknowledgement of the Buyer's order by Sealed Air;

1.5 'Company' means Sealed Air (New Zealand) Ltd. unless otherwise stated;

1.6 '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.

1.7 'goods data sheet' means any description, specification, information sheet, or any other document or data supplied by Sealed Air to the Buyer or referred to in the Quotation;

1.8 'in respect of' means in respect of any contract or transaction entered into by Sealed Air in the ordinary course of business and to which these terms and conditions apply;

1.9 'insurance' means insurance in the name of Sealed Air, procured by Sealed Air if required by the Buyer;

1.10 'insurance policy' means any insurance policy procured by Sealed Air and in respect of which Sealed Air has accepted the risks under the insurance policy;

1.11 'Law' means all laws, enactments, regulations, by-laws, statutes, and other legislation to which these terms and conditions are subject;

1.12 'related to' means to be related to the performance of services by Sealed Air to the Buyer (each a 'Transaction');

1.13 'Related Body Corporate' has the same meaning as 'Related Company' in the Companies Act 1993;

1.14 'related to the performance of services' means related to the performance of services by Sealed Air to the Buyer (each a 'Transaction');

1.15 'goods' includes all goods, equipment and other personal property to be sold, leased, hired or otherwise supplied by Sealed Air to the Buyer under the Contract;

1.16 'in any form or by any means' or 'in any manner' means in any form or by any means (including without limitation); and

1.17 'in full or in part' means in full or in part (including without limitation)

1.18 'in any event' means in any event (including without limitation).
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, in contract or in tort.

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, a right of use, a reproduction right or any other intellectual property right which is the property of Sealed Air. Any logotype, trademark, design, drawing, artwork, photograph or other intellectual property furnished by Sealed Air to the Buyer are the property of Sealed Air and shall not be reproduced without written consent of Sealed Air. All drawings, specifications, know-how, software source code or details of manufacturing processes, designs or operations are the property of Sealed Air.

14 PRINTING, ARTWORK AND COMPOSITION

Any printing, artwork or composition which 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 all costs, charges, losses and liabilities that may result therefrom or any other Buyer-supplied information.

15 TERMINATION

If the Buyer fails to pay or perform any of the terms of the Contract or (ii) is insolvent, a receiver (whether under 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 and require the Buyer to return all plant, equipment, and materials in which Sealed Air has an interest to Sealed Air by virtue of section 36(1)(b)(ii) of the Personal Property Securities Act 1993, and to ensure maximum benefit for Sealed Air by virtue of section 36(1)(b) of the PPSA, and to ensure maximum benefit for Sealed Air by virtue of section 36(1)(b)(iii) of the Personal Property Securities Act

16 FORCE MAJEURE AND FRUSTRATION

Sealed Air will not be liable to the Buyer for failure to fulfill 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 suppliers or subcontractors, creditors, or the Buyer have incurred directly or indirectly, or for which Sealed Air is liable, as a result of a delay caused by an event of force majeure, frustration, impossibility of performance or an act or omission of the 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 any 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, 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 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 Goods and Services Tax Act 1985 (“GST Act”)). If the Supply being the subject of the quotation are taxable for the purpose of the GST Act, in addition to paying for the Supply, the Buyer must pay to Sealed Air the GST payable in respect of the taxable supply. If any other taxes are or may be imposed 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 and delivery shall be constituted with under- and overage shall not be more than 10%. 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 under- 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) Laminated 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. The Buyer and Sealed Air agree to sub to the non-exclusive jurisdiction of the courts of New Zealand and the courts of appeal from them.

21.1 The Buyer shall not or may not sell, assign, transfer or dispose of or in connection with the Contract (‘disagree’), 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 their best efforts to resolve the dispute by mutual agreement. 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 select a mediator or fail to complete the 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.

21.2 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 any proceeds and any accession that secures any of the unused goods. Sealed Air has the right to sell or lease, in the ordinary course of business, the goods which have not been supplied by Sealed Air to the Buyer, other than any acquired property which has been supplied by Sealed Air to 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 any 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.

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.

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).

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.

1.3 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 any 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.

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