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, hired, let 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 work which describes goods and services to be supplied by Sealed Air;

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 (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, 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. 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 and/or contract. If the Buyer is not in possession 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.

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 supply immediately upon their arrival on site including provide the relevant utilities which are required to perform the services as advised by Sealed Air.

3.4 If a change of Law (as defined in clause 12) occurs which causes Sealed Air to incur more or less than otherwise would have been incurred, the Contract price shall be deemed to be adjusted to take account the difference. If the change of Law causes delay to Sealed Air, then the time for performance of Sealed Air's obligations shall be extended by a period of time equal to the period of the delay. 

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 on delivery of the goods to the Buyer. All amounts owing to Sealed Air including credit interest for late payment must be paid by the eleventh (11th) 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 suspend performance of any contracts for which it has not yet received payment and 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 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 delivery of any goods or 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 due to accident or malicious or fraudulent damage, theft or any other risk and the Buyer must maintain that insurance in the name of Sealed Air until title in the goods passes to the Buyer.

7 TITLE

7.1 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 in respect of goods. Until such time as all debts owing to Sealed Air by the Buyer 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 not take any action that may prejudice the legal interest of Sealed Air, and shall not deal or dispose or negotiate in any way with the goods without the prior written consent of Sealed Air.

8 LIABILITY

8.1 Subject to clause 11, the Buyer acknowledges that Sealed Air or a person purporting to act on behalf of the Buyer who has made any representation or given any warranty 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, Sealed Air will have no liability to the Buyer in respect of 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.

9 TECHNICAL SPECIFICATIONS

9.1 Invoices, weights, gauges, sizes and tolerances of Sealed Air shall be treated as prima facie correct and irrefutable 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 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) if 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) the Buyer carries 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 warranty 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.

10.2 Buyer agrees that any advice or work provided by Sealed Air at no charge is provided by Sealed Air 'as is' and will have no liability to the 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 Commonwealth or the equivalent 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 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 any implied or expressed by statute, common law or trade custom or usage or otherwise are hereby expressly excluded.

12 LIABILITY

12.1 In addition to 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 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) In respect to subject of 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, consequential or loss of profits, loss of business, reputation, loss of reputation, economic loss or damage to equipment or property or any other claim whatsoever which results from, or is in any way attributable to, the sale, delivery or performance of the Supply or the Contract.
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, an agreement for the purposes of the Personal Property Securities Act 2009 (Cth) or otherwise. The Buyer will provide Sealed Air with prompt assistance and information as reasonably requested so that Sealed Air may understand and address any product quality concerns.

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. They may not be copied or used for any purpose other than as expressly authorized by Sealed Air in writing or communicate any details of the drawings 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 assumes all liability and agrees to indemnify and hold Sealed Air harmless in respect of any loss, damage, cost, expenses, claims, actions, proceedings, damages or other liabilities 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 aggrieved party is seeking and whether the aggrieved party wishes to 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, 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.

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 apply to 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 aggrieved party is seeking and whether the aggrieved party wishes to 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, 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 PPASA
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 the goods supplied by the Buyer 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 not be liable to pay to Sealed Air all costs which suppliers or sub-contractors of Sealed Air 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 at any time be demand 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, embargo, strike or lock-out, labour shortage, failure or delay in transportation, act or omission (including laws, regulations, codes and standards, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).

21.2 Any payments which have been made to Sealed Air under the Contract shall be applied towards the satisfaction of such sum as at any time may be demand 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, embargo, strike or lock-out, labour shortage, failure or delay in transportation, act or omission (including laws, regulations, codes and standards, 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 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 the 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 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 underdegrade 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 underdegrade 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 25 kilograms; and (c) Tubing in quantities of less than 10,000 meters.

22 GENERAL
22.1 If 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. All prior verbal and written agreements, representations, warranties, explanations and commitments expressed or implied, affecting that subject-matter are superseded by the Contract and have no effect.
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 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.
22.7 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 (within the meaning of the Australian Consumer Law) and a standard form contract (within the meaning of the Australian Consumer Law), any term of these terms and conditions which would be void because the term is unfair:
(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.
22.10 The parties consent to the Contract being signed by or on behalf of a party by an electronic signature. Where the Contract is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by the electronic signature.