

## 1. GENERAL

- 1.1. The parties to this Contract are the Sealed Air entity named in the Purchase Order ("We", "Us", "Our") and the person or organisation named as supplier in the Purchase Order ("You", "Your").
- 1.2. Subject to clause 3, these Conditions prevail in any conflict between them and the Purchase Order or any authorised contract with Us.
- 1.3. No variation of this Contract is legally binding upon either party unless in writing and signed by both parties.
- 1.4. A reference to "\$" or "dollars" in the Contract is to New Zealand dollars (unless expressly stated otherwise).
- 1.5. The use of the word "includes" or "including" shall be interpreted to mean "includes" or "including without limitation".

## 2. ACCEPTANCE

- 2.1. You are taken to have accepted the terms and conditions of this Contract by indicating Your acceptance by oral or written communication to Our nominated contact officer, or by Your conduct that is consistent with the existence of a contract. For example, where You start to perform Your obligations under the Contract even though You have not expressly advised Us of Your acceptance.
- 2.2. "Contract" means an authorised contract with Us, created by the Purchase Order and these Standard Terms and Conditions.

## 3. SPECIAL CONDITIONS

- 3.1. The Contract includes any special conditions referred to in the Purchase Order ("Special Conditions"). If any such Special Conditions are inconsistent with the conditions of the Contract or any other authorised contract, the Special Conditions will, to the extent of the inconsistency, prevail.

## 4. SERVICES

- 4.1. You must at all times perform any services specified in the Purchase Order ('Services') with all reasonable care and skill and, where applicable to a high standard in accordance with relevant best practice.
- 4.2. You must perform the Services in accordance with the specifications, including any timeframe, set out in the Purchase Order.
- 4.3. The Services must be free from defects (including in respect of performance) and be complete according to the specifications of the Contract.
- 4.4. If the Services are not provided according to such specifications under the Contract, We may, by notice, require You to remedy any default in the performance of the Services, redo the Services or complete the Services, at no additional cost to Us, or We may terminate the Contract as provided in clause 16 below.
- 4.5. Where You fail to remedy Your default in performance, complete the Services, or redo the Services within 30 days after notification by Us under subclause 4.4 We may perform the work or have it performed, the cost of which will be offset against any fees payable to You under the Contract, but where the costs exceed any remaining payments under the Contract, We may recover the cost from You.

## 5. GOODS

- 5.1. Any goods specified in the Purchase Order ('Goods') must be free from defects (including in respect of performance), must be of satisfactory quality, and must meet their purpose and be complete.
- 5.2. The Goods must be delivered in accordance with any specifications, including any timeframe, set out in the Purchase Order.
- 5.3. We may inspect the Goods at any time.
- 5.4. If there is a defect in the Goods or the Goods are not delivered in accordance with the specifications, We shall be entitled to reject any Goods supplied in whole or in part which are not in accordance with the Contract, or We may by notice require You to remedy the defect, or complete the Goods, at no additional cost to Us.
- 5.5. If the Goods do not meet their purpose or are not in accordance with the Contract, We may by notice require You to replace the Goods at no additional cost to Us.
- 5.6. Where You fail to:
  - (a) remedy a defect in the Goods;
  - (b) complete the Goods, or
  - (c) replace the Goods;

- 5.7. within 30 days after notification by Us under subclauses 5.4 and 5.5, We may perform or have performed the necessary work and recover the cost from You.
- 5.7. Without additional cost to Us, You must provide reasonable access to Your premises and all other necessary assistance for Our representatives to inspect any manufacture or assembly of Goods.
- 5.8. If We require, You will submit samples of Goods, and You must not proceed to bulk manufacture until We have approved the samples.
- 5.9. We do not accept Goods, even after payment of the relevant invoice until We have had a reasonable time, at least 30 days to inspect the Goods following delivery, or during use in the case of latent defect(s).
- 5.10. A full description of the Goods must appear clearly and legibly on the outside of every package. If the Goods are hazardous they must be clearly marked with the proper hazard labels in accordance with applicable law and international standards.
- 5.11. You shall pack the Goods appropriately for delivery to Our address and shall be responsible for any damage caused by inadequate packaging and improper loading.

## 6. PASSING OF TITLE & RISK

Property in, and risk of loss or damage to, the Goods passes to Us when the Goods are delivered to Us unless consignment terms are otherwise agreed in writing by the parties. In case of technical equipment, the risk shall transfer to Us only after inspection and functional testing has been undertaken with satisfactory results. You shall at your own cost, take out all necessary insurance policies with a reputable insurance company to insure the Goods until risk passes to Us. On request, You will provide Us with copies or certificates of such insurance as evidence of compliance with this clause 6.

## 7. WARRANTY

- 7.1. You warrant to Us that the Goods:
  - (a) will be of merchantable quality, free from all latent and patent defects and fit for any purpose held out by You or made known to You in writing at the time the Purchase Order is placed by Us;
  - (b) will meet and conform to any and all relevant specifications under the Contract;
  - (c) will comply with all statutory laws and regulations relating to the supply of the Goods and Services; and
  - (d) will not infringe any intellectual property or other rights of any third party.
- 7.2. The warranty period commences on the date of delivery or acceptance of the Goods, whichever is the later, and shall be valid for one (1) year, or the length of Your or the manufacturer's standard warranty period, whichever is longer ('Warranty Period').
- 7.3. You warrant that You are the legal and beneficial owner, and will convey good title of the Goods, free from any third party interests.
- 7.4. You warrant that during the Warranty Period, the Goods are free from defects in design, materials and workmanship.
- 7.5. If We, within a reasonable time after acceptance, give You notice of any defect or omission discovered in the Goods during any Warranty Period, You must, during the Warranty Period, at Your cost and risk remedy defects in warranted Goods by repair, replacement or modification at Our option. You must meet all costs incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
- 7.6. Where You fail to rectify a defect covered by warranty within 30 days after notification by Us, We may perform, or have performed, the necessary remedial work, and all costs and outgoings incurred will be reimbursed to Us by You.
- 7.7. You warrant that We are free to use the Goods or any product of the Services once delivered to Us.
- 7.8. You indemnify Us in full against all claims, liability, fines, loss, damage, costs and expenses (including legal expenses and attorney fees) incurred by Us as a result of or in connection with:
  - (a) breach of any warranty given by You;
  - (b) any claim that the Goods and/or Services infringe, or their importation, use or resale infringe the intellectual property or other rights of any other person/entity;

- (c) any act or omission, including delay, by You or Your employees, agents or sub-contractors in supplying, delivering, and installing the Goods and/or Services; and  
all claims made against Us for losses, damages or expenses sustained by Our agents, customers or third parties to the extent that this arose from by Your supply of the Goods and/or Services.

## **8. CONTRACT PRICE**

- 8.1. The contract price for the Goods or Services specified in the Purchase Order includes all applicable GST or VAT taxes.  
8.2. Subject to clause 8.1 You will be liable for all taxes, duties or government charges relating to the delivery of the Goods or performance of the services. Contract price may be increased only with Our prior written consent.

## **9. INTELLECTUAL PROPERTY**

- 9.1. "Intellectual Property" includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include moral rights (being the rights of attribution and integrity of authorship and the right not to have authorship falsely attributed) or the rights of performers.  
9.2. Unless otherwise agreed or notified between the parties all Intellectual Property created under the Contract and relating to the Goods or Services is, from the time of creation of the right, owned by Us.  
9.3. You are granting Us an irrevocable, non-exclusive, transferable, royalty-free licence to use Your Background IP rights in connection with the Goods and Services for the use, repair, maintenance, upgrade or modification of the Goods or equipment the subject of the Services. "Background IP Rights" means Intellectual Property rights in any information or materials owned or controlled by a party prior to the commencement of or independently from the Contract.

## **10. INDEMNITY AND INSURANCE**

- 10.1. You indemnify Us, against all loss, damage, injury or expense We may sustain or incur as a result, whether directly or indirectly:  
(a) of any breach of this Contract including any action or claim for alleged infringement of any patent, copyright, registered design, trade mark or any other intellectual property rights, by reason of Our receipt or use of the Goods or Services; or  
(b) of any act or omission involving fault on Your part in relation to the provision of Goods or Services under this Contract.  
10.2. You will, for so long as any obligations remain in connection with this Contract, effect and maintain, with a reputable insurance company reasonably acceptable to Us, all insurances that would adequately protect You and Your personnel (including subcontractors of any tier) in the event of any liability arising out of the supply or performance of the work under the Contract (including latent defects), including:  
10.2.1. a public and products liability insurance which provides coverage for an amount of not less than \$10 million per occurrence or such other amount as agreed in writing between the parties;  
10.2.2. contract works insurance covering loss of or damage to the work (if any work will be performed on site);  
10.2.3. if the work includes any consulting or design, professional indemnity insurance for an amount of not less than \$5 million per occurrence;  
10.2.4. comprehensive motor vehicle insurance (if applicable);  
10.2.5. workers' compensation insurance to cover Your liability to persons engaged by You to perform the work; and  
10.2.6. any other insurance which is required by law to be effected in the location where the work is to be performed.  
10.3. The public and products liability policy and the contract works policy (if any) must name Us as an additional insured and contain a waiver of subrogation against Us.  
10.4. Upon Our request, You will provide Us with proof of insurance as required in this clause 10 and We may withhold payment until such proof is provided by You.  
10.5. If You fail to comply with Your obligations under this clause 10 We may, as appropriate, take out insurance of the types specified in this clause 10 and the premiums paid in respect of those policies will be a debt due to Us.

## **11. DISCLOSURE OF INFORMATION**

- 11.1 You, Your employees or agents, must not disclose or make public any information or material acquired or produced in connection with the Contract without Our prior written approval.  
11.2 You shall keep in strict confidence, and shall not disclose to any third party, all technical know-how, inventions or processes and any other confidential or commercially sensitive information concerning Our business, which has been disclosed to or obtained by You from Us.  
11.3 On request, You shall immediately return to Us all confidential or commercial sensitive information, which has been provided to You by Us.

## **12. CONFLICT OF INTEREST**

- 12.1 You warrant that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of Your obligations under the Contract. If, during the term of the Contract, a conflict or risk of conflict of interest arises, You undertake to notify Us immediately in writing of that conflict or risk.

## **13. GOVERNING LAW AND FORUM**

- 13.1. This Contract is governed by the laws of New Zealand (excluding: a) any conflict-of-laws provisions thereof that would otherwise require the application of the law of any other jurisdiction; and b) if applicable, excluding the United Nations Convention on Contracts for the International Sale of Goods) and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.  
13.2. 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.  
13.3. The parties must use best 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.  
13.4. 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.  
13.5. Either party may take immediate steps at any time to seek urgent injunctive or equitable relief before an appropriate court.

## **14. PAYMENT**

- 14.1. We will pay for the Goods or Services according to payment terms specified in the Purchase Order. The payment period will commence following the last to occur of Our acceptance of the Goods or the satisfactory provision of the Services and receipt of a correctly rendered invoice. If this period ends on a day that is not a business day, payment is due on the next business day.  
14.2. An invoice is correctly rendered if it is complete, it is sent to the address specified by us, contains (i) a tax invoice number and invoice date, (ii) Your name, ABN and GST number and a description of the Goods and Services supplied, (iii) Our relevant 10 digit Purchase Order number, (iv) Your bank account details (if these have not previously been provided to Us), (v) the amount has been calculated in accordance with prices set out in the Purchase Order and, where explanation is necessary, accompanied by documentation substantiating the amount claimed. Invoices must be sent in PDF format with only one invoice in each PDF.  
14.3. If You owe us money for any reason We shall be entitled to a right of set off as against amounts owed to You under this Contract.  
14.4. If VAT or GST applies, You must give Us a tax invoice to enable Us to claim an input tax credit.

## **15. SUBCONTRACTING AND ASSIGNMENT**

- 15.1. You must not, without Our prior consent in writing, subcontract the whole or any part of the work under this Contract. Despite any approval to sub-contract, You remain fully responsible for the performance of Your obligations under the Contract.  
15.2. You agree to make available to Us, if We request, details of all subcontractors engaged by You in the performance of this Contract, and You acknowledge (and agree to inform subcontractors) that we may publicly disclose the names of all subcontractors engaged.  
15.3. You must not, without Our consent in writing, assign Your rights under this Contract. Any purported assignment without such consent shall be null and void. We may, in our absolute discretion, assign, pledge or transfer our interest in the Contract (or any part

of it) and any of its rights or obligations hereunder without Your prior written consent.

#### **16. TERMINATION**

- 16.1. We may terminate this Contract or reduce the scope of Goods or Services by giving You 30 days' prior written notice.
- 16.2. We may immediately terminate this Contract or reduce the scope of the Goods or Services by giving 14 days prior written notice to You:
  - (a) if You are in breach of the Contract or outstanding Purchase Order;
  - (b) if at any time You become insolvent or if any bankruptcy proceedings are instituted against You or if any receiver or administrator is appointed to Your business;
  - (c) if You cease or threaten to cease to carry on business.
- 16.3. On such termination We can:
  - (a) cease payments under the Contract;
  - (b) recover from You all sums paid for Goods or Services not provided; and
  - (c) purchase similar services from alternative suppliers and claim by way of indemnity from You any loss it may incur in doing so.
  - (d) Only pay You for Goods and Services that have been properly rendered under this Contract.
  - (e) On termination or expiry of this Contract You will immediately return to Us all Our property as requested by Us including, without limitation, all Our Intellectual Property, confidential information and tools.

#### **17. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

You will not represent Yourself to be, and must ensure that none of Your employees or agents represent themselves to be, Our employee, partner or agent or otherwise able to bind or represent Us in performing Your obligations under the Contract.

#### **18. COMPLIANCE WITH LAWS**

- 18.1. You must: (a) comply with and ensure that Your employees, directors, officers, agents, contractors and subcontractors ("**Personnel**") comply with all applicable laws, regulations, codes, standards orders, principles of common law and equity; authorisations and requirements of authorities or organisations and fees, charges, taxes, tariffs and duties payable in connection with the foregoing ("**Laws**") including (i) any applicable anti-corruption and anti-bribery Laws including the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001, the United States Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2012, anti-money laundering Laws and other criminal Laws; (ii) all Laws applying to labelling and packaging of hazardous chemicals (if applicable); (iii) all Laws applying to materials intended for contact with food (if applicable) including all applicable FDA regulations and Regulation EU 10/2011; (iv) all applicable export control, customs and foreign trade Laws; (v) Laws relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination; (vi) competition Laws including the Competition and Consumer Act 2010 (Cth); and (vii) Laws governing occupational health and safety and environmental protection; (b) comply with standards equal to or better than Sealed Air's Code of Conduct that can be found at <http://www.sealedair.com/code-conduct>; and (c) to the extent that Your Personnel enter on Our site or property, ensure that such Personnel comply with Our health, safety and environmental policies and are aware that they enter onto Our sites at their own risk. You must, when using Our premises or facilities, comply with all security and office regulations in effect at those premises or in regard to those facilities, as notified by Us.
- 18.2. Notwithstanding the foregoing, Our parent company is a US company so all Our business and that of Our suppliers and distributors are subject to export compliance laws of the United States of America in addition to local laws. You will ensure that You and Your Personnel comply with such laws and all other applicable Laws relating to trade compliance.

#### **19. MISCELLANEOUS**

- 19.1. If any clause in this Contract is or becomes inoperative, the validity of this Contract and the Purchase Order as a whole shall not be affected.
- 19.2. No failure or delay by Us in exercising any right under the purchase order shall operate as a waiver of such right nor shall any single or partial exercise of any right preclude the exercise of any other right. No waiver shall be valid unless such waiver is in writing signed by Us.

#### **20. PPSA**

You must:

- 20.1. Not register or otherwise perfect or seek to perfect, and use best endeavours to ensure that no third party registers or otherwise perfects or seeks to perfect, any security interest in or in connection with the Contract, or the Goods (whether under the Personal Property Securities Act 1999 or otherwise);
- 20.2. Remove from, and use best endeavours to ensure third parties remove from, any relevant register any security interest in or in connection with the Contract, or the Goods that You or such other third party has previously registered; and
- 20.3. Ensure all subcontracts (if any) entered into by You in connection with the Goods and Services have, for the benefit of Us, a clause that reflects this clause 20.