

**GENERAL TERMS AND CONDITIONS OF TRADE**  
**CONDITIONS OF SALE**

**1 PRELIMINARY**

- 1.1 These General Terms and Conditions of Trade (hereinafter known as “Conditions”) shall apply to and shall form part of all quotations, delivery notes, invoices and contracts for the sale of goods entered into between Diversey West Africa Limited (hereinafter called “the Vendor”) and any Purchaser (herein defined) to the exclusion of all and any terms and conditions contained on or referred to in an order form or other documents or correspondence from any Purchaser including any terms and conditions which the Purchaser may purport to apply under any purchase order, confirmation of order or similar document.
- 1.2 All orders for Goods shall be deemed to be an offer by the Purchaser to purchase Goods pursuant to these Conditions. Any such order sent to the Vendor by the Purchaser shall be accepted entirely at the discretion of the Vendor, and, if so accepted, will only be accepted subject to these Conditions. Each order which is so accepted shall constitute an individual legally binding contract between the Vendor and the Purchaser.
- 1.3 Any variation, addition, substitution or alteration of these Conditions (including any special terms and conditions agreed between the parties) shall not be binding unless agreed in writing by the Vendor.

**2 DEFINITIONS AND INTERPRETATION**

- 2.1 **“Conditions”** means the general terms and conditions of sale set out in this document as amended from time to time and includes any special terms and conditions agreed in writing by the Vendor.
- 2.2 **“Goods”** means all or any articles, chattels personal or things that the Purchaser buys or agrees to buy from the Vendor.
- 2.3 **“Invoice”** means an itemized bill detailing all goods delivered by the Vendor to the Purchaser with an account of all costs and presented to the Purchaser for payment.

- 2.4 **“Order”** means a written offer by the Purchaser to the Vendor indicating his intention to purchase Goods from the Vendor at the quoted Price and subject to these Conditions.
- 2.5 **“Price”** means the price for the Goods excluding VAT.
- 2.6 **“Purchaser”** means the person who buys or agrees to buy the Goods from the Vendor.
- 2.7 **“Quotation”** means a statement from the Vendor indicating the current price(s) of certain quantities and description of Goods.
- 2.8 **“Vendor”** means Diversey West Africa Limited a limited liability company based in Obafemi Awolowo Way IKEJA PO Box : 100212 Lagos, Nigeria.

### **3 THE GOODS**

- 3.1 The quantity, description and specification of the Goods shall be as set out in the Quotation. Errors and Omissions are hereby accepted. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Order.
- 3.2 It shall be the Purchaser’s sole responsibility to ensure that the Goods purchased are suitable and compatible with his requirements.
- 3.3 The Vendor warrants that it has title to the Goods and further warrants that that it is not aware of any actual or alleged infringements of any intellectual property rights of third parties which relate to the Goods.
- 3.4 The Vendor warrants that the Goods are fit for the general purpose for which Goods of a similar nature are used but not for any specific purpose for which the Purchaser intends to use them unless the Purchaser has expressly disclosed the purpose for which it intends to use the Goods when sending the Order.

### **4 THE PRICE AND PAYMENT**

- 4.1 The Price shall be as quoted by the Vendor in the Quotation and subsequently in the Invoice and shall be exclusive of VAT. The Vendor reserves the right to amend Prices at any time with prior notice. Errors and omissions are hereby accepted.
- 4.2 Payment of the Price and VAT shall be due and payable thirty (30 days) from the date of the statement prepared by the Vendor. Time for the purposes of payment of the Price shall be of the essence. Account statements shall be prepared monthly and delivered to the Purchaser but failure to provide a Statement will not be accepted as reason for late payment.
- 4.3 The Price shall payable be free of any right of set off, lieu or counterclaim whatsoever.
- 4.4 Interest on overdue invoices shall accrue from the date when payment becomes due until the date of payment at a rate of 4% per annum above the base lending rate of Citibank. Nigeria from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 4.5 Invoice(s) will reflect the prices at the time of shipment (which may reflect an increase of prices up to 100% of the prices indicated in the Orders Confirmation) and Purchaser agrees to pay such amounts.

## **5 DELIVERY AND ACCEPTANCE**

- 5.1 Unless otherwise stated in the Order, the Price quoted includes delivery to the address specified in the Order, provided that the Vendor reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.
- 5.2 Any time or date for delivery given by the Vendor shall be given in good faith, but shall be an estimate only. The supplier shall Endeavour to ensure certainty of delivery of goods throughout the contract period.
- 5.3 The Purchaser shall be deemed to have accepted the Goods upon delivery to the address specified in the Order and upon confirmation by stamping and signing off the delivery documents.
- 5.4 The Purchaser shall advise in writing within 24 hours of receipt of the Goods any discrepancies in specification or from the Goods ordered or any anomalies excluding incorrect quantities, after which he shall be deemed to have accepted all the goods as supplied. After this period, the Purchaser shall not be entitled to reject Goods that are not in accordance with the Order and in the case of larger quantities of Goods; the Purchaser shall be entitled to pay for them at the Price.
- 5.5 Where the Vendor undertakes the delivery of the Goods to the Purchaser's premises, the Vendor will

replace free of charge any Goods proved to the Vendor's satisfaction to have been damaged in transit provided that within 24 hours after delivery both the Vendor and the carriers have received from the Purchaser notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

5.6 The Vendor will not consider any claims for shortage of delivery or damage in transit unless written notice is given to the carrier and Vendor within 24 hours of receipt of goods. In this condition time shall be of the essence.

## **6 TITLE AND RISK**

6.1 Risk in the Goods shall pass to the Purchaser upon delivery and where they are collected from the Vendor's premises, risk shall pass immediately upon being loaded onto the motor vehicle taking delivery for or on behalf of the Purchaser.

6.2 In spite of delivery having been made, title in the Goods shall not pass from the Vendor to the Purchaser until:

- i) the Purchaser shall have paid the Price plus VAT in full; and
- ii) No other sums whatsoever shall be due from the Purchaser to the Vendor.

6.3 Notwithstanding the provisions of condition 6.2 hereof, the Vendor shall be entitled to sue for recovery of the Price once payment has become due. Until such time as property in the Goods passes from the Vendor to the Purchaser, the Purchaser shall upon request deliver up to the Vendor such of the Goods as have not ceased to be in existence or resold. If the Purchaser fails to do so the Vendor may enter upon any premises owned occupied or controlled by the Purchaser where the Goods are situated and repossess the Goods. On the making of such request the rights of the Purchaser under Clause 6.5 shall cease.

6.4 Until property in the Goods passes to the Purchaser in accordance with condition 6.2 hereof the Purchaser shall hold the Goods on a fiduciary basis as bailee for the Vendor. The Purchaser shall store the Goods (at no cost to the Vendor) separately from all other goods in his possession and marked in such a way that they are clearly identified as the Vendor's property.

6.5 Notwithstanding that the Goods (or any of them) remain the property of the Vendor the Purchaser may sell or use the Goods in the ordinary course of the Purchaser's business at full market value for the account of the Vendor. Any such sale or dealing shall be a sale or use of the Vendor's property by the Purchaser's own behalf and the Purchaser shall deal as principal when making such sales or dealings. Until property

in the Goods passes from the Vendor, the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Vendor and shall be at all material times identified as the Vendor's money.

- 6.6 The Purchaser shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the Property of the Vendor. Upon breach of this condition (and without prejudice to the other rights or remedies of the Vendor) all sums whatsoever owing by the Purchaser to the Vendor shall forthwith become due and payable.
- 6.7 The Purchaser shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Vendor until the date that title in the Goods passes from the Vendor to the Purchaser. Upon breach of this condition (and without prejudice to the other rights or remedies of the Vendor) all sums whatsoever owing by the Purchaser to the Vendor shall forthwith become due and payable.

## **7 GUARANTEES AND LIABILITIES**

- 7.1 For goods which are manufactured by the Vendor, the Vendor shall free of charge replace defective goods where the defects appear or are identified within 7 days of delivery, PROVIDED THAT notice in writing of the defects complained of shall be given to the Vendor upon their appearance, and such defects shall be found to the Vendor's satisfaction to have arisen solely from the Vendor's faulty workmanship or materials.
- 7.2 Any repaired or replaced goods shall be redelivered by the Vendor free of charge to the address specified in the Order but otherwise in accordance with and subject to these Conditions.
- 7.3 In the event that the goods are returned and subsequently tested and found to be free of any faults the Vendor shall, at its discretion, make a minimum charge of Usd 50/= to cover the cost of testing, and Purchaser shall also pay the return carriage charge. No goods shall be returned without payment of these charges. In the event that payment has not been made within 14 days of notification of the no fault found charge, the goods shall be disposed of without any liability to the Vendor.
- 7.4 The Vendor shall reserve the right to refuse to replace any goods which have been:
- i) Supplied in accordance with the Purchaser's Order;
  - ii) Returned incomplete;
  - iii) Returned out of its original packaging or with defaced packaging; or
  - iv) Returned in a non-re-saleable condition.
- 7.5 The Vendor's liability under this Condition shall be to the exclusion of all other liability to the Purchaser whether contractual, tortious, or otherwise for defects in the goods or for any loss or damage to or caused by the goods, and all other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise howsoever,

are hereby excluded.

- 7.6 Notwithstanding anything contained in these Conditions or the Order, the Vendor's liability to the Purchaser in respect of the Order, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the Goods specified in the Order.

## **8 FORCE MAJEURE**

The Vendor shall not be liable in any respect whatsoever for delay in the performance of, or the failure to perform, any obligation pursuant to any Order, in each case, as a result of circumstances beyond its control. If such circumstances delay or prevent the performance of any obligation under any Order for 30 days or more, the Vendor shall be entitled by written notice to cancel or terminate such Order or its outstanding obligations thereunder.

## **9 CONFIDENTIALITY**

Both the Vendor and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods or the Order.

## **10 REMEDIES OF THE PURCHASER**

- 10.1 Where the Purchaser rejects any Goods then the Purchaser shall have no further rights whatsoever in respect of the supply to the Purchaser of such Goods or the failure by the Vendor to supply Goods that conform to the Order.

- 10.2 Where the Purchaser accepts or has been deemed to have accepted any Goods then the Vendor shall have no liability whatsoever to the Purchaser in respect of such Goods.

- 10.3 The Vendor shall not be liable to the Purchaser for late delivery of the Goods.

## **11 GOVERNING LAW**

{These Conditions shall be governed in all respects by the Laws of Nigeria}