



DIVERSEY TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Business Day"	a day other than a Saturday, Sunday or public holiday in the jurisdiction, when banks are open for business;
"Contract"	the contract between Diversey and the Customer for the supply of Products in accordance with these Terms and Conditions as amended from time to time and any Supply Agreement;
"Customer"	the person or firm who places an order for or purchases the Products;
"Diversey"	One of the Diversey group of companies more specifically named in any Supply Agreement or in a purchase order;
"Event of Force Majeure"	has the meaning given to it in Clause 10.1;
"Order"	the request by Customer to Diversey for the provision of Products, which shall be in accordance with the terms of the Supply Agreement;
"Payment"	has the meaning given to it in Clause 4.1;
"Price"	the price payable by Customer to Diversey for the supply by Diversey, as stipulated in any Supply Agreement (or if no such Price is agreed in writing or specified by Diversey, then this shall be the Price listed in Diversey's price list current at the date of the Order), and unless otherwise agreed by Diversey in the Supply Agreement the Price shall be the ex works price;
"Products"	The Equipment, Goods and/or Services provided by Diversey in accordance with these Terms and Conditions, including any software as a service licenses or subscriptions, and equipment servicing;
"Supply Agreement"	any written supply agreement, between the Parties governing the long-term relationship concerning the supply of Products by Diversey to Customer;

1.2 references to "**Clauses**" are to clauses of these Terms and Conditions;

1.3 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification); and

1.4 references to "**written**" or in "**writing**" (except in respect of sending a notice in accordance with Clause 11) includes in electronic form.

2. BASIS OF CONTRACT

2.1 An order placed by the Customer constitutes an offer by the Customer to pay for Products in accordance with these Terms and Conditions which apply to the exclusion of any terms and conditions submitted, proposed or stipulated by Customer.

2.2 These Terms and Conditions apply to Diversey's supply of all Products (sale or hire) to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any Supply Agreement entered into or the giving by Customer of any delivery instruction or the acceptance by Customer of delivery or collection of the Products shall constitute unqualified acceptance by Customer of these Terms and Conditions.

2.3 Save as expressly provided herein, this Contract (together with any documents referred to in it) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties hereto preceding the date of this Contract and in any way relating to the subject matter of this Contract and to the exclusion of any representations not expressly stated herein, save for any material fraudulent misrepresentations or any other misrepresentation. Each Party acknowledges that it has not entered into this Contract based on any representation that is not expressly incorporated into this Contract.

2.4 This Contract (together with any documents referred to in it) constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

2.5 Except as otherwise described in this Contract, all materials and other particulars furnished by Diversey prior to the Supply Agreement, or in Diversey's sales or marketing materials or other documents (including its catalogues, trade literature, brochures, quotations, price lists or website) or made orally by Diversey, are given for general information purposes only and Customer acknowledges that it is not entering into this Contract in reliance upon any such materials or other particular (except to the extent that such materials or particulars form part of this Contract); the

Products may also look different to their representation in any such materials or particulars.

2.6 Except as expressly provided otherwise in these Terms and Conditions, no change to the Contract shall be binding unless it is agreed in writing by each of Diversey and Customer.

2.7 In the event of any conflict between the provisions of these Terms and Conditions and the rest of the Contract or the Supply Agreement, then these Terms and Conditions prevail over the Supply Agreement and any Order unless and to the extent that Diversey expressly agrees in writing that any of the Terms and Conditions are varied or excluded.

2.8 The Order shall contain:

2.8.1 a reference to the Product already described by Diversey (in the Supply Agreement);

2.8.2 the quantity of that Product ordered with Diversey;

2.8.3 the identity of Customer; and

2.8.4 details of the place and delivery and timeframe for delivery, to reflect the details already given by Diversey in the Supply Agreement or otherwise agreed in writing by Diversey.

2.9 Except for the information in an Order described in Clause 2.8, if Customer provides Diversey with an Order, purchase order, specification or other document for the Products, such document shall be purely for Customer's administrative purposes only and shall not form part of this Contract.

2.10 Customer shall ensure that Orders are placed on the terms agreed between the Parties.

2.11 It is Customer's responsibility to ensure that the Order is complete and accurate and to point out to Diversey in writing anything which is incomplete or inaccurate.

2.12 The Order shall only be deemed to be accepted when Diversey issues written acceptance of the Order at which point and on which date the Contract shall come into existence. Each Order constitutes a separate contract. There may be more than one contract between the Parties in force at the same time.

3. PRODUCTS, SERVICES, DELIVERY AND RISK

3.1 In consideration for the payment of the Price and any other sums due by Customer under this Contract, Diversey shall supply the Products or/and Services referred to in the Order to Customer.

3.2 Diversey shall use its reasonable endeavours to perform its obligations within any timescales set out in this Contract, but time for performance shall not be of the essence and Diversey shall not have any liability for any delays or failure to accurately perform its obligations:

3.2.1 if it has used those endeavours; or

3.2.2 if caused by any failure or delay on the part of Customer or Customer's agents, staff, officers, employees, contractors or customers or by any breach by Customer of this Contract or any other contract between the Parties.

3.3 Any timeframe for delivery in a previous contract shall not be an indication of the timeframe for delivery in a subsequent Contract.

3.4 Packaging shall be in accordance with Diversey's customary practices. If Customer would like a special request for packaging, this is subject to Diversey's consent and Customer shall pay the extra cost.

3.5 Partial delivery or performance shall be permitted. Diversey may deliver and provide the Products in instalments. Unless the Parties otherwise agree in writing, Diversey may invoice Customer for each instalment.

3.6 Delay, default or non-delivery of any instalment by Diversey shall not entitle Customer to cancel or terminate, and shall not affect, the remainder of this Contract or the Supply Agreement.

3.7 Unless otherwise agreed in writing between the Parties, this Contract is for delivery of the Products at the place stipulated in this Contract or Supply Agreement (or if no place stipulated, then Diversey's normal location for despatch of the Products to Customer in the jurisdiction of the parties).

3.8 Customer may be required to sign a delivery note and other documentation upon delivery of the Products. The signing of any such documentation by Customer shall be evidence that the Products have been delivered and in the quantities stipulated in the documentation. On receipt of the Products Customer shall inspect the Products and packaging for any obvious damage (including the sound of breakages) and make a note of any obvious damage when signing.

3.9 All risk in the Products shall pass to Customer upon delivery, provided that where delivery is delayed due to breach by Customer of its obligations under this Contract risk shall pass at the date when delivery would have occurred but for that breach.

3.10 If delivery of the Products is delayed or obstructed through Customer's default or breach of this Contract or if Customer unreasonably declines or delays in accepting or taking delivery or receipt of the Products, then (subject to Clause 7) Diversey shall not have any Liability as a result and Diversey may (without prejudice to any other right or remedy available to it) do all or any of the following:

3.10.1 sell the Products for Diversey's account;

3.10.2 cancel this Contract as regards any Products that remain to be delivered or performed;

3.10.3 charge a reasonable storage fee for the Products together with a charge covering the cost of carriage to and from the Customer; and

3.10.4 require Customer to indemnify Diversey for any and all losses, liabilities, claims, proceedings, judgments, damages, demands, actions, costs, charges, expenses, penalties and fines suffered or incurred by Diversey as a result of Customer declining or delaying.

4. TITLE AND RISK

4.1 With the exception of Products on hire, notwithstanding delivery, unless otherwise agreed in writing, title to and ownership of any Products for sale shall not pass to Customer until the earlier of:

- 4.1.1 Diversey receives payment in full (in cash or cleared funds);
- 4.1.2 the Customer resells the Products, in which case title shall pass to the Customer at the time specified in clause 4.4.
- 4.1.3 all other sums which are or which become due to Diversey from Customer on any account;

4.2 Until payment, Customer shall:

- 4.2.1 hold the Products on a fiduciary basis as Diversey's bailee;
- 4.2.2 hold the Products in good, saleable condition; and
- 4.2.3 keep an up-to-date list of the location of Diversey's property and present this to Diversey upon request;
- 4.2.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- 4.2.5 store the Products separately from other goods or in any way so that they remain readily identifiable as Diversey's property.

4.3 Diversey may at any time until title passes under this Clause 4, without notice, recover possession of the Products which are the property of Diversey. Diversey may also require Customer at Customer's cost, within three Business Days of Diversey's request, to deliver up to Diversey or make available to Diversey for collection from a single accessible collection point as Diversey requires all Products which are the property of Diversey. Customer hereby grants to Diversey for Diversey and its agents, staff, officers, employees and contractors an irrevocable licence to enter for that purpose any premises then occupied by or in the ownership or possession of Customer or Customer's customer. Customer shall indemnify Diversey against all claims, losses, damages, liabilities, costs and expenses so arising in exercising its rights under this Clause 4.3.

4.4 Subject to clause 4.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Diversey receives payment for the Products. However, if the Customer resells the Products before that time, title to the Products shall pass from Diversey to the Customer immediately before the time at which resale by the Customer occurs.

4.5 If the Customer has any Products on hire, or Products to which title has not passed, and the Customer becomes subject to any of the events listed in clause 9.2.4 then, without limiting any other right or remedy Diversey may have, the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and Diversey may at any time require the Customer to deliver up all Products in its possession, including any which have not been resold, or irrevocably incorporated into another product; and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them:

5. SERVICES

5.1 Diversey shall supply the Services to the Customer in accordance with any Service Specification in all material respects.

5.2 Diversey shall use its reasonable endeavours to meet any performance dates for the Services specified in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

5.3 Diversey reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Diversey shall notify the Customer in any such event.

5.4 Diversey warrants to the Customer that the Services will be provided using reasonable care and skill.

6. CUSTOMER OBLIGATIONS

6.1 Customer shall be responsible for:

- 6.1.1 bringing to the attention of all subsequent handlers, users, site visitors, customers, recipients, employees, agents and subcontractors, any details supplied by Diversey (including potential hazards) about the Products;
- 6.1.2 ensuring that the Order and the Contract contain full and accurate information regarding the Products ordered. This includes checking that the ordered Products have the correct description and applicable product number;
- 6.1.3 ensuring that the kind and type and class of Products meet its requirements and purposes and is suitable for all anticipated uses;
- 6.1.4 ensuring that the Products are properly stored and in the environment envisaged for storage of the Products (including temperature and any extra protection or packaging, and avoiding infestation, contamination or breakage);
- 6.1.5 ensuring that, following delivery by Diversey, the Products and packaging are used, stored and disposed of in accordance with all relevant laws, regulations, bye-laws and codes of practice and all licences, authorisations, approvals, consents and permissions,

and with any instructions given by Diversey or the manufacturer; and

6.1.6 it co-operates with Diversey's representatives and provides them with all reasonable information and assistance.

6.2 Customer acknowledges that if the intended use of the Products is for a time critical purpose or if it is for a purpose that could involve significant or immeasurable loss if Products are not available, then it is Customer's responsibility to take all steps necessary to minimise the risk of that, which may include:

- 6.2.1 placing the Order for the Products in sufficient time to allow for significant buffer time to avoid or minimise the impact of delays, default or non-delivery;
- 6.2.2 obtaining extra Products if necessary; and
- 6.2.3 obtaining sufficient insurance cover to cover the risk.

7. WARRANTY

7.1 Subject to the rest of this Clause 7, Diversey warrants that:

7.1.1 as at delivery the Products shall be undamaged, free from material defects in design, manufacture and materials and conform to the Specification; and

7.1.2 it shall deliver the Products in the quantities agreed in this Contract.

7.2 Diversey is not responsible for any services or products not expressly stipulated in this Contract that Diversey will provide. Except for any matter upon which Diversey specifically agrees in writing with Customer to advise or do, Diversey shall not have any Liability for advising on, or failing to advise on, or doing, or failing to do, anything else (including on any laws, rules, regulations, bye-laws or codes of practice).

7.3 Diversey shall at its option replace or provide a refund for Products that are lost or damaged in transit to the place of delivery. Diversey shall not have any Liability for loss of or damage to Products in transit or on delivery to the point of delivery unless Customer notifies Diversey within five Business Days:

7.3.1 after the expected date of delivery or receipt that it has not received the Products or the right quantity of them; or

7.3.2 after receipt that the Products have any damage as would be obvious from such inspection as Diversey would reasonably expect; and also

unless Customer provides Diversey with Diversey's delivery note number and such other information and documentation as Diversey reasonably requires at the same time as the notice.

7.4 Subject to Clause 7.5, Diversey shall at its option replace or provide a refund for delivered Products which are not in conformance with the warranty set out in Clause 7.1.1.

7.5 Diversey's Liability for defective or damaged Products is subject to:

7.5.1 Customer notifying Diversey of any claim promptly upon discovery of the defect or damage and in any event within one month (other than anything that involves potential danger to health, in which case it shall be no more than one Business Day) of discovery, specifying with reasonable detail the way in which it is alleged that the Products do not conform to this Contract;

7.5.2 Customer allowing Diversey to take all control over decisions in respect of dealing with the issue including with third parties;

7.5.3 Customer having provided Diversey with Diversey's delivery note number and such other information and documentation as Diversey reasonably requires at the same time as the notice in Clause 7.5.1;

7.5.4 Customer showing to Diversey's reasonable satisfaction that the defect or damage is solely attributable to Diversey's (or Diversey's subcontractors') defective materials or workmanship and not: (a) from normal use; or (b) any acts or omissions by anyone after delivery by Diversey (including the carrier);

7.5.5 the Products having not been: (a) misused or subjected to neglect, improper or inadequate care or carelessness (including being hit, dropped, kicked, knocked or pushed), or abnormal usage or storage conditions; or (b) involved in any accident or attempt at alteration, change or modification or inspection within the Product itself except by or on behalf of Diversey or as approved by Diversey or in accordance with Diversey's instructions; or (c) dealt with or used or stored contrary to good trade practice or any oral or written instructions, advice or recommendation of Diversey;

7.5.6 Customer allowing Diversey's representatives the opportunity to access, inspect, test, remove and replace the Products;

7.5.7 Customer having paid for the Products in full; and

7.5.8 upon Diversey's request, Customer returning the defective or damaged Products carriage and insurance paid at Customer's risk to Diversey's premises or such other location stipulated by Diversey anywhere in the world and carefully packed to avoid damage in transit. Unless and until Diversey inspects, repairs or receives the Products, Customer shall hold the Products safely and securely in good condition.

7.6 The warranty contained in this Clause 7 is specifically limited to Customer. No warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.

7.7 If Customer makes an invalid claim under the warranty, Diversey may charge Customer for its fees and costs of examining, testing, storing and

replacing the Products and dealing with the claim and removing and delivering the Products.

7.8 Except where expressly provided for within this Contract, Diversey excludes all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Products.

8. LIABILITY

8.1 This Clause 8 prevails over all other Clauses and sets forth the entire Liability of Diversey, and the sole and exclusive remedies of Customer, in respect of:

8.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Contract or of any goods or services in connection with this Contract; or

8.1.2 otherwise in relation to this Contract or entering into this Contract.

8.2 Diversey does not exclude or limit its Liability for:

8.2.1 its fraud; or

8.2.2 death or personal injury caused by its Breach of Duty; or

8.2.3 any breach of the non-excludable obligations implied by law as to having title to supply goods; or

8.2.4 any other Liability which cannot be excluded or limited by applicable law.

8.3 Subject to Clause 8.2, Diversey does not accept and hereby excludes any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Contract.

8.4 Subject to Clause 8.2, Diversey shall not have any Liability in respect of any:

8.4.1 indirect or consequential losses, damages, costs or expenses;

8.4.2 loss of actual or anticipated profits;

8.4.3 loss of contracts;

8.4.4 loss of use of money;

8.4.5 loss of anticipated savings;

8.4.6 loss of revenue;

8.4.7 loss of goodwill;

8.4.8 loss of reputation;

8.4.9 loss of business;

8.4.10 ex gratia payments;

8.4.11 loss of operation time;

8.4.12 loss of opportunity; or

8.4.13 loss of, damage to or corruption of, data;

whether or not such losses were reasonably foreseeable or Diversey or its agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 8.4.2 to 8.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

8.5 Subject to Clause 8.2, the Liability for loss of or damage to tangible physical property caused by shall not exceed the amount of £500,000.

8.6 Subject to Clauses 8.2 and 8.5, the total aggregate Liability of Diversey shall be limited to the greater of:

8.6.1 £500 or:

8.6.2 as applicable:

(a) in respect of a defective or damaged Product, if Diversey has breached the warranty in Clause 7 but has successfully replaced that defective or damaged Product in accordance with the remedies set out in Clause 6 for breach of that warranty, the lesser of £5,000 or 20% of the total sums paid and total other sums payable, in aggregate, by Customer to Diversey in respect of that defective or damaged Product; or

(b) in situations other than 8.6.2(a), in respect of a defective or damaged Product, the greater of £500 and 120% of the total sums paid and total other sums payable, in aggregate, by Customer to Diversey in respect of that defective or damaged Product.

8.7 Subject to Clauses 8.2 and 8.5, in respect of any Liability of Diversey other than may fall under Clause 8.6, the total aggregate Liability of Diversey shall be limited to 120% of the total sums paid and total other sums payable, in aggregate, by Customer to Diversey in the 12 months prior to the claim in issue.

8.8 Diversey shall not have any Liability to the extent caused by any act, omission or default of Customer.

8.9 The limitation of Liability under Clauses 8.5, 8.6 and 8.7 has effect in relation both to any Liability expressly provided for under this Contract and to any Liability arising by reason of the invalidity or unenforceability of any term of this Contract.

8.10 In this Clause 8:

8.10.1 "**Breach of Duty**" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty); and

8.10.2 "**Liability**" means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Contract, including liability expressly provided for under this Contract or arising by reason of the invalidity or unenforceability of any term of this Contract (and for the purposes of this definition, all references to this "**Contract**" shall be deemed to include any collateral contract).

9. PRICES & PAYMENT

9.1 Customer shall pay to Diversey the Price and other sums due under this Contract. Unless provided for in a Framework or Master Agreement or by agreement in writing payment is due within 30 days of the date of the invoice.

9.2 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 Buyer agrees to pay such amounts.

9.3 Diversey reserves the right to change its pricing at any time upon one months notice. Where the pricing provided for at the date of signature of any distribution agreement or other agreement is quoted in X currency, and the pricing is impacted by fluctuations in another currency Y, if the parity between X and Y, based on an X equals Y rate, varies by more than 2% the Price shall be automatically and accordingly adjusted.

9.4 Where Diversey requires a particular part of a Price to be paid in advance of delivery of the Products, supply of the Products is conditional on Diversey first receiving the advanced Price and any other sums due in cleared funds in full from Customer.

9.5 Unless otherwise stipulated in the Supply Agreement (or otherwise agreed between the Parties in writing), Diversey may issue invoices to Customer for the Price (or the relevant part) and other sums due in connection with the Price:

9.5.1 prior to delivery in the event of Customer having to pay any amounts in advance of delivery; or

9.5.2 at the time of delivering or making the Products available for delivery in the event that Diversey has agreed that Customer can pay following delivery.

9.6 All Prices and sums due under this Contract are exclusive of any value added tax or other sales, import and export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of the Prices and other sums due.

9.7 Customer shall pay Diversey by any payment method reasonably stipulated by Diversey.

9.8 To the extent that Diversey has given Customer credit terms in writing from time to time, Customer shall pay Diversey in full for any sums due under this Contract within 30 days of the date of invoice (or such other period as Diversey may stipulate in writing).

9.9 Diversey may stipulate in writing a total credit limit of Customer from time to time. If there are any amounts due or owing from Customer (and any other customers associated with Customer) to Diversey under any agreement between them (including under this Contract) in aggregate in excess of the total credit limit, Diversey may withhold delivery or making available for collection of Products until Customer shall pay such sum to Diversey so as to reduce the amounts due or owing below the credit limit.

9.10 Unless otherwise stipulated in this Contract or agreed in writing between the Parties, payment shall be in the currency stated on the invoice from time to time.

9.11 Payment shall be deemed made when Diversey has received cleared funds in full.

9.12 Payment of all sums due to Diversey under this Contract shall be made by Customer in full without any set-off, deduction or withholding whatsoever.

9.13 If Customer is late in paying any part of any monies due to Diversey under this Contract or any other agreement between the Parties, Diversey may (without prejudice to any other right or remedy available to it whether under this Contract or by any statute, regulation or by-law) do any or all of the following:

9.13.1 charge interest on the amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), or at 8% whichever is higher, such interest to run from day to day and to be compounded monthly; and

9.13.2 sell or otherwise dispose of any Products which are the subject of any Order, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment; and

9.13.3 suspend the performance of this Contract and any other agreement between Diversey and Customer until payment in full has been made.

10. TERM AND TERMINATION

10.1 This Contract shall commence when it becomes legally binding in accordance with Clause 2.12 and, unless terminated earlier by either Party exercising any right of termination as set out here, or in any applicable Supply Contract, shall continue in force until the later of:

10.1.1 Customer having paid for the Price and all sums in full; and

10.1.2 Diversey having delivered all the Products to Customer.

10.2 Either Party may terminate this Contract immediately by notice in writing to the other Party if:

- 10.2.1 the other Party is in persistent breach of any of its obligations under this Contract or any other agreement between the Parties; or
- 10.2.2 the other Party is in material breach of any of its obligations under this Contract or any other agreement between the Parties which is incapable of remedy; or
- 10.2.3 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Contract or any other agreement between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or
- 10.2.4 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986), or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt.
- 10.3 In any event, Diversey may terminate this Contract if Customer is at least 10 Business Days' late in paying any sum due under this Contract or any other agreement between the Parties.
- 10.4 Termination of this Contract shall be without prejudice to any accrued rights or remedies of either Party.
- 10.5 Termination of this Contract will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.6 Upon termination of this Contract for any reason:
- 10.6.1 Diversey shall cease to perform this Contract; and
- 10.6.2 all outstanding Prices and any other sums shall become immediately payable, whether invoiced or not and
- 10.6.3 any accrued rebates will be void and not payable.

11. FORCE MAJEURE

- 11.1 Save for obligations in respect of payment of the Price, neither Party shall have any Liability for any breach, hindrance or delay in the performance of this Contract attributable to any cause beyond its reasonable control, including any act of God, actions or omissions of third parties not in the same group as the Party seeking to rely on this clause (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation ("**Event of Force Majeure**"), regardless of whether the circumstances in question could have been foreseen.
- 11.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 11.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 11.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 11.5 Should any performance of obligations be delayed under this Clause 10, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 11.6 If the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Contract immediately by notice to the other, in which event neither Party shall have any Liability by reason of such termination.
- 11.7 If Diversey has contracted to provide identical or similar products to more than one customer and is prevented from fully meeting its obligations to Customer by reason of an Event of Force Majeure, Diversey may decide at its absolute discretion which contracts it will perform and to what extent.

12. NOTICES

- 12.1 Any notice required or authorised to be given under this Contract shall be in writing and may be served by personal delivery or by recorded delivery or by overnight courier or by facsimile addressed to the relevant Party at its address stated in this Contract or at such other address or facsimile number as is notified by the relevant Party to the other for this

purpose from time to time or at the address or facsimile number of the relevant Party last known to the other.

- 12.2 Any notice so given by post shall be deemed to have been served two Business Days after the same shall have been posted by recorded delivery or by overnight courier and any notice so given by facsimile shall be deemed to have been served upon receipt of an answerback signal from the receiving machine, and in proving such service it shall be sufficient to prove that the letter or facsimile was properly addressed or numbered and, as the case may be, despatched or an answerback signal received.

13. ASSIGNMENT

- 13.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of this Contract, Diversey may assign, transfer, novate or subcontract its rights, liabilities or obligations under this Contract either in whole or in part to any other person, firm or company. Diversey shall promptly give notice to Customer of any such assignment, transfer or novation.
- 13.2 Customer shall not (or purport to) assign, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Contract or any of its rights, liabilities or obligations under this Contract without the prior written consent of Diversey (such consent not to be unreasonably withheld or delayed).

14. GENERAL

- 14.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under this Contract or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Contract or at law.
- 14.2 If any Clause or other provision in this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 14.3 Nothing in this Contract shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.
- 14.4 A person who is not a Party to this Contract has no rights under any law to enforce any term of this Contract.
- 14.5 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales, unless any Supply Agreement provides differently in which case this takes precedence over this clause. The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim brought by Customer arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) unless any Supply Agreement provides differently in which case this takes precedence over this clause. All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

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