



## HENKEL SINGAPORE STANDARD TERMS OF SUPPLY

### **1. DEFINITIONS**

In these Terms and in any contract to which these Terms apply, unless the context requires otherwise:

"Business Day" means a day other than a weekend or public holiday in the place where Goods are delivered;

"Claim" means any judgment, claim, demand, action, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by original claim, counter claim or otherwise whether arising at common law, in equity, under statute or otherwise wherever arising, whether known or unknown at the time of this Contract, whether presently in contemplation of the Parties or not;

"Consequential Loss" means loss or damage, whether direct or indirect, in the nature of, among other things, loss of profits, loss of revenue, loss of production, liabilities in respect of third parties (whether contractual or not), loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a Party was advised of the possibility of such loss or damage;

"Contract" means the contract between the Supplier and the Customer for or in relation to the sale and purchase of Goods, and includes these Terms together with the Supply Agreement;

"Customer" means the person to whom Goods are supplied by the Supplier or who is named as purchaser in the relevant order form or sales invoice, and its successors;

"Goods" are the goods being provided by the Supplier to the Customer under the Contract and may include services;

"Loss" means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or arising from any Claim, action, proceedings or demand made against the person, however arising and whether present or future, fixed or ascertained, actual or contingent and includes Consequential Loss;

"Personal Data" means any personal information and/or personal data relating to any identifiable individuals, whether available and/or collected in written, oral, electronic, photographic and/or other forms, whether or not such information is expressly stated to be confidential or marked as such;

"Relevant Data Protection Laws" mean any laws and regulations (as amended or updated from time to time) relating to the protection, collection, processing and control of Personal Data in Singapore and each jurisdiction of performance of these Standard Terms of Supply;

"Supplier" means Henkel Singapore Pte Ltd or Henkel APAC Supply Chain Pte. Ltd, and its successors;

"Supply Agreement" means the supply agreement between the Supplier and the Customer for or in relation to the sale and purchase of Goods;

"Terms" means these standard terms of supply.

### **2. GENERAL**

2.1 The Contract governs all orders, supplies and related dealings between the Supplier and the Customer (the "Parties") in relation to the sale and purchase of Goods. The Contract

supersedes all previous communications between the Parties and overrides all terms to the contrary, including any different or additional terms specified in the Customer's order, unless expressly agreed to in writing by the Supplier. In case the terms of the Supply Agreement differ from these Terms, the Supply Agreement will prevail to the extent of any inconsistency.

2.2 No other representations, warranties, terms or conditions, whether express or implied, are binding on the Supplier, with the exception of those which are agreed to in writing and signed by the Supplier, or those which are implied by law and cannot be excluded by express agreement.

2.3 If any of the terms of the Contract is or becomes invalid, illegal or unenforceable, it will be read down to the extent necessary to make it valid, legal or enforceable or, if that is not possible, it shall be severed from the Contract, but that shall not affect the enforceability of any other term in the Contract.

2.4 By placing an order or accepting a delivery of Goods, the Customer is deemed to have agreed to the terms of the Contract.

2.5 To the extent the Customer's related corporation (as that term is defined in the Companies Act (Cap. 50)) ("Customer Affiliates") places orders under the Contract, the Customer must ensure that each Customer Affiliate complies with the terms of the Contract insofar as they apply to the Customer and Customer is responsible for each act or omission of Customer Affiliate as if that act or omission were an act or omission of Customer under the Contract.

### **3. ORDERS**

3.1 The Supplier may decline to accept any orders in whole or in part. Orders are subject to availability of the Goods. No cancellation of an order by the Customer will be valid without the Supplier's written consent.

3.2 The Customer acknowledges that any description of the Goods is given by way of identification only and no order placed pursuant to the Contract constitutes a sale by description or sale by sample.

3.3 If an order requires multiple deliveries over an extended period of time ("Forward Order"), the Customer will pay for so much of any Forward Order as is from time to time invoiced by the Supplier.

3.4 The Customer must take delivery of, and pay for, all Goods obtained for or held at the Customer's request.

### **4. PRICES & TAXES**

4.1 The purchase price of Goods will be the amount quoted by the Supplier to the Customer in writing that is subsequently included in an order for Goods that has been accepted by the Supplier or, where no price has been quoted, the price as specified in the Supplier's current price list ("Purchase Price"). The Supplier may vary any prices quoted prior to any order being accepted (in which case the Customer may elect to order the Goods at the varied price or cancel its order).

4.2 The consideration for any supply of Goods made by the Supplier to the Customer, including the Purchase Price, excludes goods and services tax or other such taxes of a similar nature (unless otherwise specified) and other applicable duties and taxes, which must be paid by the Customer at the same time and in the same manner as the consideration.

4.3 Any payments made by the Supplier to the Customer are subject to any withholding or deduction required by law.

4.4 Any rebates, discounts or reductions calculated by reference to the consideration are to be calculated on the consideration excluding any amount in respect of goods and services tax or other such taxes of a similar nature, and any incidental costs payable in respect of the Goods.

4.5 Where payment is made by credit card, the Supplier may charge the Customer an administration fee.

4.6 Any increase in the cost of supply of the Goods before delivery will be paid by the Customer (but only to the extent such increase is reasonable and reflects the actual cost of supply).

4.7 The Supplier may vary the Purchase Price of future orders not yet accepted by the Supplier by giving written notice of variation to the Customer.

## **5. CREDIT CHECKS**

The Customer authorises and consents to the Supplier obtaining credit information about it from a credit reporting body and/or other relevant entities and supplying information to a collection agency for commercial credit related or credit guarantee purposes or for ongoing credit management of the Customer's account, including collecting payments.

## **6. TERMS OF PAYMENT**

6.1 Customer must pay the Supplier for Goods in full within thirty (30) days of the date of the invoice ("Due Date"), unless otherwise agreed in writing.

6.2 If Customer does not make payments in accordance with the Contract or the Customer's credit rating changes, the Supplier may take any or all of the following actions, without prejudice to Supplier's other rights and remedies under the Contract or under law:

- a) charge interest on all overdue amounts at a monthly rate equivalent to the Singapore Interbank Offered Rate administered by the Association of Banks in Singapore plus 2%, calculated monthly from the day after the Due Date until the date of payment (inclusive). If the Singapore Interbank Offered Rate is less than zero, it shall be deemed to be zero;
- b) suspend delivery of Goods that are the subject of the Contract or any other Goods until payment is made in full;
- c) review and amend the terms of payment for future orders by the Customer; or
- d) withdraw its credit facility to the Customer.

6.3 All sums payable to the Supplier shall be paid in full,

- a) free of any restriction or condition;
- b) free of any deduction or withholding for or on account of tax; and
- c) without deduction or withholding on account of any amount, whether by set-off, counterclaim or otherwise.

## **7. DELIVERY**

7.1 Under the Contract, "delivery" occurs when the Customer takes delivery of the Goods personally or through its agent, employee or contractor including when the Supplier delivers the Goods to a carrier engaged on behalf of the Customer for delivery or, where the Goods are to be collected, when the Supplier notifies the Customer that the Goods are ready for collection.

7.2 Delivery will be *CIP (destination) Incoterms® 2020*, unless agreed otherwise in writing by the Parties. The Customer must take delivery of the Goods within 5 Business Days of being notified that the Goods are ready for delivery ("Collection Date"). If the Customer causes any delay in delivery, the Goods are deemed to have been delivered to the Customer on the Collection Date and thereafter the Supplier holds the Goods as bailee for the Customer and the Customer is liable for all the related costs and expenses of storing the Goods beyond the Collection Date.

7.3 The Supplier reserves the right to charge reasonable additional delivery fees in relation to special or expedited orders, or where an order is for less than the minimum quantity of Goods specified by the Supplier from time to time.

7.4 The Supplier will make reasonable efforts to arrange delivery of the Goods by the date for delivery specified in the order ("Delivery Date"), however the Delivery Date is an estimate only and time of delivery is not of the essence of the Contract. The Customer will have no Claim against the Supplier for any Loss caused by the failure to deliver by the Delivery Date.

7.5 The Customer must provide any necessary particulars or instructions to the Supplier within a reasonable time to enable the Supplier to complete the Customer's order.

7.6 The Supplier may make instalment deliveries and each instalment delivery will be deemed to be a separate contract to which these Terms apply. Failure by the Supplier to deliver any instalment will not entitle the Customer to cancel the balance of the order.

## **8. INSPECTIONS AND ACCEPTANCE**

The Customer must inspect all delivered Goods and give notice to the Supplier within ten (10) Business Days of delivery if the Goods are not in accordance with the Customer's order. Failing to give such notice and subject to any non-excludable condition implied by law, the Goods will be deemed to have been delivered to and accepted by the Customer.

## **9. RISK AND TITLE**

9.1 The risk of Loss or damage to the Goods will pass to the Customer when the Customer takes delivery or is deemed to have taken delivery of the Goods in accordance with Clause 7.

9.2 Subject to Clause 7.2, the Customer must insure the Goods from the time that risk passes to the Customer against all usual risks until the Supplier has been paid in full for them, and the Customer shall hold any moneys received from any insurer relating to those Goods for the benefit of Supplier. On request the Customer shall provide copies of such insurance policies to the Supplier.

9.3 The Supplier retains title to the Goods, and title to the Goods does not pass from the Supplier to the Customer, until the Customer pays in full all amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Customer to the Supplier on any account at any time ("Amounts Owing"). This is so even if the Customer has taken possession of the Goods.

9.4 The Goods, proceeds and any product or mass that the Goods may be or become part of are referred to in these Terms collectively as the "Collateral".

9.5 Pending settlement of the Amounts Owing, the Customer must, where possible, keep the Goods separate from its other property and in a manner to enable such Goods to be identified as having been supplied by the Supplier, including through retention of all labelling on such Goods and the retention of such Goods in their original packaging.

## **10. SECURITY INTERESTS**

10.1 The Customer will not create any other security interests in the Goods until title passes to the Customer.

10.2 Until title to the Goods passes from the Supplier to the Customer in accordance with Clause 9.3, the sale of the Goods by the Customer to associated or related entities for further resale or use is not permitted.

10.3 The Customer undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Supplier's security interest. If such a security interest does arise despite the previous sentence, the Customer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral, and must immediately pay those proceeds to the Supplier in reduction of the Amounts Owing.

10.4 The Supplier can apply amounts that it receives from the Customer, including under Clause 10.3, towards Amounts Owing to it in such order as the Supplier chooses.

## **11. DEFAULT OF CUSTOMER**

11.1 The following events are "Events of Default":

a) (where the Customer is a corporation) the Customer is or becomes insolvent or any order is made or resolution passed for its winding up or the appointment of a provisional liquidator or an administrator is appointed to it or a manager, receiver or controller is appointed

over all or any part of the Customer's assets or if any petition or proceeding for its dissolution, insolvency, corporate rehabilitation, liquidation or similar action has been filed; or

b) (where the Customer is a natural person) the Customer is or becomes the subject of a bankruptcy petition, application or order or becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of creditors or if any petition or proceeding for his insolvency or similar action has been filed, or the Customer is or becomes incompetent or quasi-incompetent by a court order and a legal guardian or receiver is appointed over his person and/or any of his properties; or

c) the Customer fails to make any payment to the Supplier when due; or

d) the Customer breaches any term of the Contract, or the Customer or Customer Affiliate engages in misconduct which is considered detrimental to the best interests of the Supplier, which is not cured within 14 days of written notice of the alleged breach or misconduct or the Supplier reasonably believes that its Goods are at risk of being disposed of otherwise than in accordance with the Contract or its title to those Goods is being challenged.

11.2 Without limiting Clause 6 of these Terms, upon the happening of an Event of Default, the Supplier may in its absolute discretion:

a) decline to deliver any Goods which have not yet been delivered and if so recover all the related costs and expenses of storing those Goods; and/or

b) otherwise cease to perform any of its obligations to the Customer; and/or

c) terminate the Contract or any other contract between the Parties; and/or

d) demand that the Customer return any Goods for which there are Amounts Owing, and upon demand the Customer must return such Goods; and/or

e) (without prejudice to any of its other rights) immediately take possession and recover the Collateral and otherwise enforce its security interest in the Collateral, and the Supplier may retain or resell or otherwise dispose of the Collateral without notice to the Customer, and the Supplier may enter any premises occupied by the Customer and remove the Collateral for those purposes.

11.3 The Customer will pay the Supplier all costs and expenses (including legal fees) incurred by the Supplier or its agents in relation to enforcing its rights and in recovering any Amounts Owing by the Customer to the Supplier.

11.4 The Customer must promptly do anything the Supplier requires to ensure that its security interest is a perfected security interest and has priority over all other security interests, including registering such security interests with the relevant authority (when applicable).

11.5 These Terms will survive the termination of the Contract or any other agreement into which these Terms are incorporated.

## **12. LIMITATION OF LIABILITY**

12.1 To the fullest extent permitted by law and subject to Clause 12.2, all terms which might be implied by statute are excluded and:

a) the Supplier's liability for any Claim whatsoever relating to the Goods whether pursuant to contract, tort, statute law or otherwise howsoever is limited, at the Supplier's election, to the replacement of the Goods or supply of equivalent goods by the Supplier;

b) the Supplier is not liable for any direct or indirect Loss howsoever incurred by the Customer in connection with the Goods or the supply or failure to supply the Goods; and

c) the Supplier shall not under any circumstances be liable for any Consequential Loss.

12.2 Nothing in these Terms limits liability which cannot legally be limited, including liability for:

a) death or personal injury caused by negligence; or

b) fraud or fraudulent misrepresentation.

12.3 If the Customer is a reseller of the Goods, it will include limitations of liability that reflect the limitations of liability set out in this Clause 12 in its supply terms with its customers.

### **13. USAGE OF THE GOODS**

13.1 The Customer will provide product data sheets ("PDS") and information supplied by the Supplier to end-users. The Supplier does not accept liability for any Loss incurred or Claim made by any person where the Goods are within specifications or are not used in accordance with the PDS. The Customer must notify the Supplier as soon as it becomes aware of any product Claims or injuries incurred as a result of use of the Goods.

13.2 The Customer will comply with all laws and regulations prevailing in the countries where it is selling or using the Goods. The Supplier may require the Customer to confirm its compliance with the applicable laws and regulations in writing at any time.

### **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 As between the Parties, the Supplier retains all intellectual property rights in and to the Goods ("IPR") and includes all trade marks, whether registered or not, branding, get up and materials and information in any form or media related to or accompanying the Goods notwithstanding any contribution by the Customer (if any) and the Customer must not:

- a) claim any interest in or to any IPR;
- b) make representations to any person about having any interest in or to any IPR; nor
- c) challenge the Supplier's right in or to, or the validity of, any IPR or otherwise do anything inconsistent with any IPR.

14.2 The Customer must notify the Supplier immediately if the Customer becomes aware of any actual, threatened or apparent infringement of or challenge to any Supplier IPR; any action, Claim or demand about the Goods or IPR by a third party; or any misleading or deceptive conduct relating to the Goods. If any of these situations arise, the Customer must take any action and provide all assistance considered necessary, and as reasonably requested, by the Supplier to protect Supplier's IPR.

14.3 The Customer must not make any admission or take any action relating to any alleged infringement of any third party's rights without the written consent of the Supplier.

### **15. FORCE MAJEURE**

15.1 If performance of any of the Supplier's obligations under the Contract is prevented, restricted or delayed by reason of an event of force majeure including any act of God, war, riot, fire, strike, lock out, industrial dispute, raw material shortage, epidemic, pandemic, plant or equipment breakdown, transport interruption, government restrictions and impositions or any other cause beyond the Supplier's reasonable control ("Event of Force Majeure"), the Supplier will give notice of the Event of Force Majeure to the Customer. The Supplier may, in such notice, elect to terminate the Contract or extend the Delivery Date for such period as may be reasonably necessary.

15.2 The Customer may cancel the order without liability if the Event of Force Majeure causes a delay exceeding 20 Business Days from the Delivery Date. The Customer will have no Claim for breach of contract or otherwise against the Supplier for Loss or damage caused by an Event of Force Majeure.

### **16. DISPUTE RESOLUTION**

16.1 Where a genuine dispute exists in relation to an invoiced amount, the Customer must give notice to the Supplier within 5 Business Days from the date of receipt of the relevant invoice of the disputed amount, giving reasons why it disputes it, and pay the amount which is not in dispute.

16.2 If there is a dispute between the Parties, the Party raising the dispute must, within 5 Business Days of identifying the issue notify the other Party of the dispute. If the dispute is not resolved within a further 5 Business Days, the dispute must be referred to the senior representative of each Party to discuss the matter and attempt to resolve it, acting in good faith.

16.3 If the dispute is not resolved under Clause 16.2 within a further 5 Business Days, either Party may take legal action to enforce their rights (subject to the terms for dispute resolution in a Supply Agreement signed by both Parties, if any, to which these Terms pertain). A Party must not commence legal proceedings in respect of a dispute in relation to an invoiced amount until the expiry of this period. Nothing in this Clause 16 will prevent a Party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief.

## **17. NOTICES**

17.1 Any notice to be given under these Terms will be sufficiently delivered if:

- a) sent by prepaid mail to the recipient's last known address or to such other address as a Party may communicate to the other in writing from time to time;
- b) sent by facsimile, where the sender's facsimile machine confirms successful transmission of the entire notice; or
- c) sent by e-mail, where confirmation is provided by the recipient that the message has been read.

## **18. DUTY TO ACT IN GOOD FAITH AND AVOID CONFLICTS OF INTEREST**

The Customer must act in good faith when dealing with the Supplier and the Customer must take all reasonable steps to investigate and disclose to the Supplier whether any actual or potential conflict of interest (such as employment arrangements or family relationships) exists between itself or any of its employees and the Supplier or any of the Supplier's employees. The Parties will use their best endeavours to resolve any conflict of interest which exists.

## **19. SUB-CONTRACTING**

The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the Goods.

## **20. VARIATION, WAIVER, CANCELLATION OR ASSIGNMENT OF TERMS**

20.1 The Supplier may, from time to time, vary these Terms by notice to the Customer and publication on the Supplier's website. The Customer will be deemed to have accepted the varied terms by ordering or accepting any Goods from the Supplier after the date of that notice.

20.2 No purported waiver, variation, cancellation or assignment of these Terms or of any rights or obligations under these Terms by the Customer will be binding on the Supplier unless agreed to in writing by the Supplier.

## **21. GOVERNING LAW**

These Terms and any contracts to which these Terms apply are governed by and construed in accordance with the laws of Singapore. The Parties submit to the non-exclusive jurisdiction of the Courts of Singapore.

## **22. CONFIDENTIALITY**

22.1 Each Party will maintain in strict confidence any proprietary data, documents and other information, including Personal Data of the other Party (hereinafter referred to as "Confidential Information"), which they may receive in connection with the Contract. No Party will make available Confidential Information to any third party without the prior written consent of the Party concerned. The term "third party" will not apply to Affiliates of either Party as hereinafter defined in Clause 22.2, provided such Affiliate will be bound to the same extent of secrecy as the Parties hereto.

22.2 "Affiliates" means, for the purposes of this Clause 22, any related corporation as defined in the Companies Act (Cap. 50).

22.3 These obligations to maintain confidence and secrecy will not apply to Confidential Information, which

- a) is in the public domain after the time of disclosure without fault of the receiving Party,
- b) was already lawfully known to the receiving Party prior to receipt thereof from the other Party,
- c) is obtained by the receiving Party from a third party having a lawful right to disclose the same, or
- d) is developed by the receiving Party independent from any access or reference to the Confidential Information supplied by the supplying Party.

22.4 Each Party will ensure that only employees who need the Confidential Information for the performance of the Contract have access to the Confidential Information and that such employees are, for the term of their employment with the receiving Party and thereafter, bound to keep confidential the Confidential Information and not to use the Confidential Information for purposes other than the performance of the Contract.

22.5 These obligations of confidentiality will expire five (5) years from the termination or expiry of the Contract.

## **23. PRIVACY**

23.1 The Customer and directors of the Customer acknowledge that the information provided in the Contract is the basis for valuation by the Supplier of the financial standing and credit worthiness of the Customer and each of them do hereby:

- a) confirm that the information provided in this Contract is true and correct;
- b) authorise the Supplier to make such enquiries and receive such information from anyone as the Supplier may consider necessary;
- c) acknowledge and confirm that the Customer has obtained the consent of the individuals whose Personal Data is provided by the Customer to the Supplier or whose Personal Data is collected by the Supplier from the Customer for the collection, use and disclosure of such Personal Data by the Supplier for the purpose of fulfilling its obligations under the Contract, to maintain a credit information file or to be disclosed to credit reporting agencies;
- d) in accordance with Relevant Data Protection Laws:
  - i. agree to the Supplier obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning the Customer's commercial activities or commercial credit worthiness and using such information for the purpose of assessing the Customer;
  - ii. authorise the Supplier to exercise the Customer's rights of access to the Customer's credit information files and credit reports;
  - iii. agree that the Supplier may give to and seek from any credit providers reports and information that have any bearing on the Customer's credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
    - 1. to assess any application by the Customer for credit or commercial credit;
    - 2. to notify other credit providers of a default by the Customer;
    - 3. to exchange information with other credit providers as to the status of the Customer's account where it is in default with the Supplier or other credit provider;
    - 4. to assess the Customer's credit worthiness at any time; or
    - 5. to assess whether to continue to supply any credit to the Customer;
- e) agree that the Supplier may seek, from a credit reporting agency, a credit report containing Personal Data about the Customer and/or directors of the Customer to assess whether to accept the Customer and/or directors of the Customer as guarantors for credit applied for, or provided to, the Customer and/or directors of the Customer;
- f) agree that the Supplier may deal with the Personal Data, collected or received about the Customer and/or directors or other personnel of the Customer, in line with the Supplier's privacy policy; and
- g) agree that these authorisations, acknowledgements and confirmations shall continue to



have effect for the duration of the period during the term of this Contract and/or which any credit or commercial credit is provided or sought by the Customer from the Supplier.

23.2 The Customer and directors of the Customer acknowledge and agree that they must before, during and after the term of the Contract:

a) take all precautionary measures to protect Personal Data, provided by or collected or received from the Supplier, against, without limitation, unauthorised access, collection, use, loss, abuse, disclosure, copying, modification, disposal or similar risks and keep such Personal Data in confidence and to not use the Personal Data for any purpose other than the purpose notified in writing to the Supplier at the time when the personal data was provided to or collected or received by the Customer; and

b) ensure Personal Data, provided by or collected or received from the Supplier, will continue to be treated as confidential in the event it becomes necessary for the Customer and/or directors of the Customer to transfer the Supplier's inquiries to an affiliated company of the Customer or any other entity or person.

23.3 The Supplier acknowledges and agrees that it will during the term of this Contract:

a) take precautionary measures to protect Personal Data, provided by or collected or received from the Customer and/or directors of the Customer, against, without limitation, unauthorised access, collection, use, loss, abuse, disclosure, copying, modification, disposal or similar risks and keep such Personal Data in confidence and to not use the Personal Data for any purpose other than the purpose notified in writing to the Customer at the time when the Personal Data was provided to or collected or received by the Supplier; and

b) ensure Personal Data, provided by or collected or received from the Customer and/or directors of the Customer, will continue to be treated as confidential in the event it becomes necessary for the Supplier to transfer the inquiries of the Customer and/or directors of the Customer to an affiliated company of the Supplier or any other entity or person.

## **24. VIENNA CONVENTION**

24.1 The provisions of the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna in 1980 (known as the Vienna Convention) are expressly excluded.