

## General Terms and Conditions of Purchase

[These general terms and conditions of purchase (“Terms and Conditions”) shall constitute part of an Order, unless the purchase agreement refers to specific terms and conditions in which case those specific terms and conditions shall apply in conjunction with the Terms and Conditions below]

### 1. Agreement

These Terms and Conditions are intended to establish the circumstances and procedures under which **Wellman International or any subsidiaries** thereof (the “**Company**”) shall purchase Goods from a seller (the “**Seller**”), and shall apply to all offers made by, orders placed by the Company (“**Order**”) and agreements concluded with the Seller as referred to in the relevant offer, order or agreement in relation to the purchase by the Company of the supplies or materials (“**Goods**”) described therein. The Company’s purchase of the Goods is expressly conditioned on the Seller’s acceptance of these Terms and Conditions. The Company expressly notifies the Seller of its objection to any different and/or additional terms proposed by the Seller in the Order or acceptance, or other document issued by the Seller, and the Company will not be bound by any standard or printed terms or conditions presented by the Seller. Unless explicitly objected to in writing received by the Company, the Terms and Conditions shall apply to all Contracts, as hereinafter defined, whether or not the Terms and Conditions applied to a prior purchase by the Company. The Company reserves the right to revoke any Contract at any time before acceptance by Seller.

*“Contract” means these Terms and Conditions and/or the offer and/or the Order and/or the order confirmation, order acceptance and/or the purchase agreement for purchase of the Goods by the Company from the Seller.*

*“Party” means, individually, the Company or the Buyer and “Parties” means both of them collectively;*

*“Terms and Conditions” means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Seller and the Company; and*

*“Writing” includes telex, electronic mail, cable, facsimile transmission and comparable means of communication.*

In these Terms and Conditions, the masculine gender shall include the feminine and the neuter and the singular number shall include the plural and vice versa. References to persons shall include natural persons, firms, bodies corporate, unincorporated associations and

partnerships, organisations, governments, states foundations and trusts (in each case whether or not having separate legal personality).

### 2. Price

The price payable for the Goods (“**Price**”) shall be not higher than that stated in the Order. Unless otherwise stated, the price shall be:

- a. inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts, levies or taxes (including any sales or use tax) other than value added tax; and
- b. fixed for the duration of the applicable Contract.

The Seller covenants that if it should at any time prior to the delivery of the Goods sold hereunder sell similar Goods in similar quantities to any third party at a lower price than the Price, it will notify the Company in writing of such lower prices, and the Company will receive the full benefit of such lower prices from the date of such sale to any third party. No variation in the Price nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company. Any unilateral change of the Price by the Seller, even partial, may therefore cause the partial or total cancellation of the corresponding Contract as the Company considers appropriate without charge or penalty.

### 3. Payment

Payment terms shall be as agreed by the Company and the Seller and set forth in the Contract. The Seller will separately invoice the Company for and in respect of each purchase and consignment of the Goods delivered under each Order. Unless otherwise stated in the Contract, the Seller shall invoice the Company for the Goods before the shipment of such Product to the Company and the Company shall pay such invoice net 45 days from the invoice date. The invoice shall be posted to the purchaser by airmail from overseas, in duplicate with the original bill of lading and/or other documents of title, if any. Without prejudice to any other right or

remedy, the Company reserves the right to set off any amount owing at any time from the Seller or associated company of the Seller to the Company against any sums payable by the Company to the Seller or associated company of the Seller under the Contract.

Payment will be made in the currency in which the price is stated in the Contract and no variation of the Price shall be made in respect of any variation of the rate of exchange.

#### **4. Title and Risk of Loss and Buying Terms**

##### **A. Domestic Purchases**

Notwithstanding any terms relating to delivery and freight in the Contract, the title and risk of loss in the Goods shall remain with Seller until the Goods ordered are actually delivered to and accepted at the Company's offices or other destination designated in writing by the Company in the Contract.

##### **B. International Purchases**

Unless otherwise agreed in writing in the Order, title shall pass from the Seller pursuant to INCOTERM version 2010.

#### **5. Insurance**

##### **A. Domestic Purchases**

Unless otherwise stated in the Contract, the Seller shall insure the Goods up to the agreed point of delivery and thereafter it will be the Company's responsibility to insure the said Goods.

##### **B. International Purchases**

The Seller/ the Company shall be responsible for insuring the Goods as per INCOTERM version 2010. However, in the event of any damage to the Goods before the title passes to the Company, the Company shall be entitled to receive the proceeds of any claim from the Seller's insurer to the extent the Company is entitled. The insurance provided by the Seller shall cover any damage to, or loss of, the Goods for the full amount of the Goods' insurable value.

#### **6. Shipment and Delivery**

Delivery of the Goods pursuant to the Contract must be made in the quantities and on the dates specified by the Company. The Company, at its discretion, may reject the early delivery of the Goods. Time is of the essence with respect to the Order. The Goods shall be properly packed, clearly labelled and adequately protected against

damage and deterioration in transit. Unless otherwise stated in the Order, the Goods shall be delivered during normal business hours to the Company's place of business or other place as may be specified in the Contract. The Seller shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the Order number, date of the Order, number of packages and contents. The Company shall not be deemed to have accepted the Goods until the Company has had fifteen (15) days to inspect them following delivery or within a reasonable time after and latent defect in the Goods has become apparent. Payment by the Company prior to the inspection of the Goods shall not constitute acceptance of the Goods and, is without prejudice to any claim that the Company may have against the Seller in respect of those Goods. The Seller shall supply the Company on delivery of the Goods with operating and safety instructions, warning notices clearly displayed, and other information as may be necessary for their proper use, maintenance and repair. Where delivery of the Goods is to be made in bulk, the Company reserves the right to reject the Goods if the quantity delivered does not correspond with the quantity ordered. If the Company accepts the quantity delivered, the quantity so delivered shall be deemed to be the quantity ordered. The Seller will repair or replace the Goods damaged or lost in transit or during off-loading, whether or not by the Company, or stacking free of charge, provided the Company gives written notice to the Seller of the damage or loss within a reasonable time.

In case of international purchases, the Goods shall be delivered on the terms as set out in the Contract or on the basis of INCOTERM version 2010. The Company's Order number and/or lot number shall be displayed on every package, tag, packing slip, bill of lading and invoice dispatched by the Seller to the Company.

#### **7. Product Characteristics and Suitability**

The Seller undertakes to deliver the Goods of the quantity, quality and description which corresponds strictly to the technical specifications quantity and description, with the particulars and/or specifications in the Contract and/or the sample accepted by the Company and/or in any applicable specification supplied by the Company to the Seller or the quotation provided by the Seller to the Company. The Goods shall be without fault and shall be new and unused unless otherwise specified. The Seller shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and conforming to all legal requirements and national and community regulations. Upon reasonable

prior notice, the Company shall have the right to inspect and test the Goods and the Seller shall not unreasonably refuse any request by the Company to inspect and test the Goods. The Company may return any rejected Goods at the Seller's risk and expense. The right to reject shall extend to the whole or any part of a consignment. The Seller shall be responsible for repayment to the Company of all costs, losses, damages and expenses whatsoever actually incurred by the Company due to rejection of the Goods and/or any additional expenditure actually incurred by the Company in obtaining other Goods to replace the rejected Goods.

#### **8. Changes to Product specification/ Purchase Order**

The Company may at any time by written notice to Seller request changes to the Contract including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. In response to such request, if such changes result in additional charges, Seller agrees to provide written quotations, including any changes to the prices, shipment or delivery dates. A request for change shall be treated as a separate Contract, unless otherwise agreed by the parties in writing. Any claim or adjustment proposed by the Seller must be approved by the Company in writing before such proposed claims or adjustments become binding on the Company.

#### **9. Warranties**

The Seller represents and warrants to the Company that the Goods shall be of satisfactory quality, material and workmanship, merchantable, free of defect in design, material and workmanship and fit for any purpose for which they are intended and shall conform to the specifications set forth in the Contract. In addition, the Seller represents and warrants that (i) the Goods shall be adequately contained, packaged or labelled and shall conform to the affirmations of fact stated thereon, (ii) the Goods will comply with all statutory requirements, applicable laws and regulations and voluntary codes of conduct relating to the Goods and their sale, use and supply (iii) in performing its obligations hereunder, the Seller shall fully comply with all applicable laws and regulations, (iv) the production, sale and pricing of the Goods will comply with all statutory requirements, applicable laws and regulations and voluntary codes of conduct, (v) the Goods or the intended use thereof do not infringe the intellectual property rights of any third party and (vi) any services included in the Goods shall be performed in a professional manner, in accordance with applicable industry standards. Seller further represents and warrants that it is able to transfer, and upon the Company's acceptance thereof does transfer, to the

Company good and marketable title to the Goods. All the representations and warranties set forth in this Section 9 shall survive acceptance of the Goods and shall be in addition to any other warranties, express or implied, available to the Company. Neither inspection nor acceptance of the Goods shall impair any of the foregoing warranties.

#### **10. Limitation on Damages**

The Company's liability and Seller's recovery, for any injuries, losses, damages, expenses, costs or other liabilities arising out of the cancellation of the Order by the Company, any breach of this Contract by the Company, or the Company's other acts or omissions (including its negligence) shall be limited to the lesser of (i) the actual and direct costs incurred by Seller for its manufacture of the Goods in question prior to such cancellation, breach, or other acts or omissions, or (ii) the purchase price for the Order. In no event shall the Company be liable to Seller for lost profits, punitive, special, consequential, indirect, exemplary or incidental damages.

#### **11. Indemnity**

The Seller will indemnify, hold harmless and, upon the Company's request, defend at Seller's sole cost and expense, the Company, its agents, servants, officers, directors and employees, the Company's distributors, dealers and all entities which purchase the Goods or Goods into which the Goods are incorporated, and their respective customers, harmless against any suit, action, proceeding, judgment, liability, cost, damage, loss, claim and expenses (including attorneys' fees and costs) occasioned by, arising out of, relating to or alleging any claim for injury, death, damage or loss to any person or any property or any consequential or incidental damages resulting therefrom, caused or contributed to by (a) any fault, defect or alleged defect in the Goods (including by reason of strict liability in tort), (b) the Seller's breach of any provision of this Contract, (c) any act, fault, or negligence of Seller or anyone acting on its behalf or (d) any infringement, misappropriation or other violation of the patent, trade secret, trademark, trade name, or other intellectual property right of any other person, firm, corporation or other entity arising from the manufacture, sale or use of any of the Goods. In connection with the Goods or otherwise, if the Seller's employees, agents, sub-contractors or other representatives are on or present at any premises of the Company, the Seller shall be and is responsible for the acts and omissions of such persons within or about the Company's premises and agrees to indemnify and hold the Company harmless against liability for damage to property or injury to or death of

persons arising out of acts or omissions of the Seller's employees or representatives. In the event of a claim by a third party against the Company which may be the subject of indemnification, the Company shall provide written notification thereof to the Seller. The Seller shall provide the Company with such reasonable assistance in the prosecution of any defence as the Company may request. The Seller will, in respect of any third party claim or suit, reimburse the Company for the legal and other actual defence expenses paid by the Company and/or the Company's insurance carriers, and for the actual amount of any settlement or final judgment award paid by the Company and/or the Company's insurance carriers.

## **12. Cancellation and Termination**

The Company shall be entitled to cancel any Order in whole or in part by giving notice to the Seller at any time prior to delivery of the Goods in which event the Company's sole liability shall be to pay to the Seller the agreed price for such Goods as have already been delivered at the time of cancellation. The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith for any reason.

## **13. Delay in delivery**

The Seller must deliver the Goods to the Company within the schedules as prescribed in the Contract. If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have under the Terms and Conditions, the Company reserves the right to: (i) cancel the Order in whole or in part; (ii) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (iii) recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and (iv) claim damages for any additional costs, losses or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

## **14. Force Majeure**

Either of the parties may suspend performance during the occurrence of an event of force majeure, which shall mean any delay directly or indirectly caused by, or in any manner arises from events and causes beyond the such party's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labour disputes, fires and natural calamities (including floods,

earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labour, materials or services through such party's usual sources at normal prices, riots, embargoes, fuel, power, materials or supplies, delay or default of common carriers, transportation delays, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of these herein before specified which are beyond its reasonable control. The Company shall be entitled to, at its sole option, cancel any Contractor any part thereof without any charge or penalty and/or obtain the Goods covered by the Contract from other sources for the duration of the Seller's inability to perform due to the occurrence or an event of force majeure and to reduce the quantity of the Goods specified in any Contract without charge or penalty. The Company may also terminate, with notice to the Seller, the total Order if the force majeure event has been in effect for a period beyond 3 months.

## **15. Waiver**

No waiver by the Company of any breach by the Seller of any of these Terms and Conditions, or delay or failure of the Company to enforce any right or remedy, shall be construed as a waiver of any succeeding breach of the same or any other term or condition. Nothing contained herein shall limit the remedies of the Company in the event of the Seller's breach of any of these Terms and Conditions.

## **16. Assignment**

The Seller shall not assign to any person or entity all or a portion of its rights or obligations under any Order purchase order or these this Terms and Conditions without the prior written consent of the Company, in its sole discretion, and any attempted assignment without that consent shall be void.

## **17. Severability**

If any provision of any Order or these Terms and Conditions is held by a competent authority to be invalid or unenforceable, the validity of the other provisions of such Order or these Terms and Conditions shall not be affected.

## **18. Notices and Communication**

Any notice or other communication that either party gives relating to the purchase of the Goods by the Company shall be made in writing and given either by hand, first class recorded postal delivery, or electronic

mail to a previously designated authorised individual or facsimile transmission.

**19. Conflicting provisions**

In the event of any conflicting or inconsistent provisions between the specific purchase agreement and these Terms and Conditions, the provisions of the specific purchase agreement shall always prevail and take precedence with respect to any such conflicting or inconsistent provisions.

**20. Status of Seller**

Nothing in the Contract relating to the Goods shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Seller and the Company.

**21. Confidentiality**

The Seller shall undertake to keep in strict confidence all

information obtained from the Company and shall not use any such information for any purpose other than the purposes originally intended without the prior written consent of the Company. The Seller shall protect the confidentiality of all such information with the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable standard of care. For the avoidance of doubt, the purchase price of the Goods shall be deemed to be confidential information for the purposes of this Section 21. The Seller shall ensure that all sub-contractors are contractually obliged to comply with the same confidentiality requirements. The terms of this clause shall survive the expiration or termination of the Contract.

**22. Governing Law**

The Contract and any dispute or claim arising out of or in connection with it or its subject matters or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ireland and the Seller submits to the exclusive jurisdiction of the Courts of Ireland.