



Terms and Conditions **for Supply of IoC Solutions**

V1.2 July 2021

1. **Agreement Structure.** These Terms and Conditions (“**Agreement**”) govern the purchase and use of all or any IoC Solutions purchased by Customer from Company pursuant to the Order Form. These terms and conditions are integrated into and the Order Form is subject to these terms. In the event of a conflict between the terms of the Agreement and the Order Form, the terms of the Order Form shall prevail.
2. **Corporate Licensing Terms.** The Parties acknowledge and agree that the Company’s IoC Solutions, and underlying software and services are proprietary to Company and its licensors and are protected under US and international intellectual property laws. Customers and Customer’s Affiliates’ rights to use the Company Solutions or receive the Services hereunder do not transfer to it any ownership, title, or interest of any kind. Standard licensing terms will apply for the use of licensed software and hardware. Such standard licensing terms will be incorporated into the EULA at the following <https://diversey.com/en/ioc-terms-and-conditions>.
3. **End User Licensing Terms.** “**End User**” means each individual who is authorized by Customer to use the Solutions. Several of Company’s IoC Solutions are provided as ‘software as a service’ (SaaS) offerings. All End Users are required to comply with the terms and conditions of the Company’s web site Terms of Use at the following <https://diversey.com/en/terms-conditions>, and accept the Privacy Notice at the following <https://diversey.com/en/privacy-policy>, before using such SaaS Offerings. Company may update such Terms of Use and Privacy Notice in its sole discretion, and any such changes shall be binding upon Customer and all End Users. End Users will be required to ‘click-accept’ the applicable End User License Agreement(s) (“**EULA(s)**”) that are applicable for the suite of Solutions that Customer elects to purchase hereunder. To the extent that opt-in or opt-out rights for certain disclosures, transfers or uses of personal information are required under applicable law, Customer shall ensure End Users provide their consent. Company will have the right to suspend or terminate access rights of any End User to use the Company Solutions or the Company website(s) for any violation of the EULA or Terms of Use.
4. **Pricing; Payment.** All pricing and payment terms are set out in the Order Form.
5. **Term.** This Agreement will commence as of the Effective Date and shall remain in effect until terminated, in accordance with the provisions set out below.
6. **Termination.** The Customer may terminate this Agreement by giving 6 months’ notice in writing. Either Party may terminate this Agreement as a result of a material breach by the other Party provided that the non-breaching Party shall provide the breaching Party with written notice and a cure period of not less than thirty (30) days. Upon any termination or expiration of this Agreement, in whole or in part: (a) Customer’s rights (and those of any End User) to use the Company’s Solutions shall immediately terminate, (b) Each Party shall at the instruction of the Disclosing Party, return, overwrite or delete Confidential Information of the Disclosing Party then in the Receiving Party’s possession.
7. **Confidential Information.** Each Party (the “**Receiving Party**”) shall treat as confidential all information received from the other Party (the “**Disclosing Party**”) in connection with this Agreement regardless of the form of receipt (collectively, “**Confidential Information**”). The Receiving Party shall not disclose Confidential Information to any third party or use it for any purpose except as expressly permitted in this Agreement without the prior written consent of the Disclosing Party. Upon any termination of this Agreement or a request by the Disclosing Party, the Receiving Party shall immediately return to the Disclosing Party all Confidential Information, including all copies or materials referring or relating to Confidential Information then in its possession or the possession of any third party who received such information from the Receiving Party. Confidential Information shall not include information that is (a) in the public domain other than due to a violation of this Agreement; (b) documented to be known to the Receiving Party before disclosure by the Disclosing Party under this Agreement and without violation of any confidentiality obligation owed to Client or any third party; (c) independently developed by the Receiving Party without reference to the Confidential Information; or (d) required to be disclosed by law or regulatory authority, provided that the Receiving Party promptly notifies the Disclosing Party in writing upon receipt of the request and before such disclosure is made.



8. **Representations and Warranties.** Customer represents and warrants that it is an entity that is duly organized and validly existing under the laws of the jurisdiction of its incorporation and principal place of business, and that each has the requisite power and authority to execute, deliver and perform all of its obligations under this Agreement. Customer represents and warrants that the performance of its obligations will not, with or without giving of notice, the lapse of time, or both, conflict with or violate (i) any provision of law, rule or regulation, (ii) any order, judgment, decree, or (iii) any third party agreement to which Customer is a party. Customer shall be fully responsible for any acts or omissions of any affiliate or End User in connection with the use of the Company's Solutions.
9. **GENERAL DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS SET FORTH HEREIN, CUSTOMER'S USE OF THE COMPANY SOLUTIONS IS AT CUSTOMER'S SOLE RISK, AND THE SOLUTIONS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. COMPANY MAKES NO WARRANTY THAT THE SOLUTIONS, OR UNDERLYING SOFTWARE, SERVICES OR THE COMPANY'S WEB SITE(S) WILL BE ERROR-FREE, VIRUS FREE, TIMELY, ACCURATE, RELIABLE, SECURE, OR FREE FROM INTERRUPTIONS OR OTHER FAILURES, OR WILL SATISFY CUSTOMER'S OR CUSTOMER'S AFFILIATES SPECIFIC REQUIREMENTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO: ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OR CONDITION OF (OR AS TO) TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, ANTI-VIRUS OR DISABLING DEVICES WARRANTY, LACK OF ACCURACY OR COMPLETENESS OF RESPONSES, OR RESULTS, OR NON-INFRINGEMENT. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY.
10. **DATA PRIVACY.** The Parties agree that if any personally identifiable information is to be processed by one party on behalf of the other as a result of this Agreement, they will enter a separate data processing agreement.
11. **DATA DISCLAIMER.** CUSTOMER ACKNOWLEDGES THAT DATA ENTRY, CONVERSION OR STORAGE MAY BE SUBJECT TO HUMAN AND MACHINE ERRORS, MALICIOUS MANIPULATION, OMISSIONS, DELAYS, AND LOSSES, INCLUDING, BUT NOT LIMITED TO, INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA, AND/OR CUSTOMER'S DETRIMENTAL RELIANCE ON MALICIOUSLY MANIPULATED DATA, WHICH MAY RESULT IN LOSS OR DAMAGE TO CUSTOMER AND ITS PROPERTY. COMPANY SHALL NOT BE LIABLE FOR ANY SUCH ERRORS, OMISSIONS, DELAYS, OR LOSSES. CUSTOMER AND CUSTOMER AFFILIATES ARE EACH SOLELY RESPONSIBLE FOR COMPLYING WITH ALL LOCAL, STATE, AND FEDERAL LAWS PERTAINING TO THE USE AND DISCLOSURE OF ANY DATA.
12. **LIMITATION OF LIABILITY.** COMPANY SHALL NOT BE LIABLE TO CUSTOMER, OR ANY EMPLOYEE, END USER, OFFICER, DIRECTOR, OR CONTRACTOR OF CUSTOMER, OR TO ANY OTHER THIRD PARTY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY TYPE WHATSOEVER. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY DAMAGES IN EXCESS OF ANY AMOUNTS COLLECTED FROM CUSTOMER OVER THE IMMEDIATELY PRIOR THREE (3) MONTH PERIOD PRECEDING THE DATE OF A CLAIM. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
13. **Indemnification.** Customer agrees to indemnify and hold harmless Company and its directors, officers, employees, affiliates, sub-licensees, and agents from and against all third party claims filed or threatened against Company and shall pay all defense costs (including reasonable expert and attorneys' fees, court costs), judgments, damages and other expenses arising out of or on account of any negligent act, omission, or willful misconduct by Customer in respect of the following: (a) any failure by Customer to comply with the obligations, representations and warranties under this Agreement, (b) Customer's (inclusive of Customer's end users, employees, contractors, and shareholders) misappropriation, misuse or unauthorized use of any Confidential Information of Company, (c) any failure by Customer or Customer Affiliates to comply with



applicable laws and regulations, including, without limitation, data privacy laws, or for any claims of personal injury or property damage; (d) Any claim of personal injury or property damage relating to a Customer or Customer Affiliates, and (e) any violations of the EULA, Terms of Use, Privacy Notice, and any content standards set forth therein.

14. **Governing Law/Dispute Resolution.** This Agreement shall be governed and construed in accordance with the laws applicable to the domestic jurisdiction of the Customer and the courts local to the Customer.
15. **Force Majeure.** Company will not be liable in any amount for failure to perform any obligations hereunder if such failure is caused by Internet outages, failures of public communications networks, earthquakes, fire, flood, electrical outages, war, epidemics or pandemics an act of God, or the occurrence of any other contingency beyond the reasonable control of Company.
16. **Notices.** Except as otherwise agreed in writing, all notices, consents, and other communications required hereunder shall be in writing, effective upon receipt and delivered by hand, or mailed by courier, certified or registered mail, return receipt requested, to the respective parties to this Agreement. Scanned .pdf documents sent via email will be valid provided that such notice is also sent via certified or registered courier within ten (10) days from the date of such transmission. The addresses for the delivery of notices shall be the addresses set forth in the preamble hereof, with attention to the chief legal officer and/or chief executive officer of each such Party.
17. **No Waiver/Severability.** No provision hereof shall be deemed waived unless such waiver is made in writing and signed by a duly authorized representative of either Party. The failure or delay of either Party to exercise any right hereunder shall not constitute a waiver thereof. If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.
18. **Independent Contractors.** Company and Customer (inclusive of any Customer Affiliates) are independent contractors in all actions contemplated by this Agreement. This Agreement shall not be construed to create any partnership, joint venture or agency.
19. **Assignment.** Customer may not assign any of the rights or delegate any of the duties hereunder without Company's prior written consent, which consent may be withheld in Company's sole discretion.
20. **Injunctive Relief.** Customer hereby acknowledges that a breach of this Agreement would cause irreparable harm and significant injury to Company that may be difficult to ascertain and that a remedy at law would be inadequate. Customer agrees that Company shall have the right to seek and obtain immediate injunctive relief to enforce the obligations under this Agreement in addition to any other rights and remedies it may have.
21. **Entire Agreement/Counterparts.** This Agreement, including any Schedules or other attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement expressly supersedes and completely replaces any and all prior agreements or understandings, whether written or oral. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of the Parties. Headings are for reference purposes only. This Agreement may be executed in duplicate counterparts. Each such counterpart, if executed by both Parties, shall be an original and both such counterparts together shall constitute but one and the same document.
22. **Further Assurances.** Each Party agrees to execute and deliver any and all additional documents and instruments, and take all other actions that may be necessary to give effect to this Agreement and all transactions and activities contemplated hereby.
23. **Non-Solicitation.** During the Term of this Agreement and for a period of twelve (12) months thereafter, Customer agrees not to, directly or indirectly solicit, hire, or contract with any employee of Company without Company's prior express written consent.
24. **Survival.** The following provisions shall survive the termination or expiration of this Agreement: 7-23.