

Wesfarmers Chemicals, Energy and Fertilisers Limited

Purchase Order – Standard Terms and Conditions

1 Provision of goods and/or services

1.1 The term “**You**” and “**Your**” means the contractor named in the purchase order; “**We**”, “**Us**” and “**Our**” means the Wesfarmers Chemicals, Energy and Fertilisers entity stated in the purchase order; and “**Personnel**” means the employees, directors, officers, representatives, agents, contractors or subcontractors of a party (but our Personnel do not include your Personnel).

1.2 You agree to be bound by the attached purchase order, any special terms and conditions contained in or attached to the purchase order and these Standard Terms and Conditions (collectively, this “**Contract**”). In the event of any conflict between the documents, precedence will be in the order listed above.

1.3 If You or Your Personnel enter or carry out any activities at Our premises, You must, in providing the goods and/or services:

1.3.1 perform all services in a manner that is safe and complies with all applicable laws, regulations, legislation and Our policies (including site rules) and guidelines including but not limited to occupational health and safety, risk identification and Job Safety Analysis (JSA);

1.3.2 not unreasonably impede or interfere with any of Our activities or the activities of any other person on Our premises;

1.3.3 ensure that Our premises are left secure, clean, orderly and fit for immediate use and at Your cost remove all rubbish and surplus materials related to the services; and

1.3.4 at Our request, remove from Our premises any Personnel who fails to comply with any requirements under this Agreement or Our reasonable instructions or who engages in any inappropriate behaviour and promptly provide a suitable replacement.

1.4 You and Your Personnel must:

1.4.1 obtain and maintain (at Your own expense) any licences, permits or consents necessary for providing the goods and/or services;

1.4.2 in carrying out any activities under or in connection with this Agreement, comply with all applicable laws, regulations, legislation and the terms of any applicable licences, permits or consents; and

1.4.3 establish and maintain a quality assurance program and quality control procedures to ensure that the quality of the goods and/or services is delivered and maintained at a consistently high standard.

1.5 You represent and warrant on a continuing basis that:

1.5.1 the goods and/or services will (as applicable):

1.5.1.1 comply with any relevant legislation, standards and industry best practices;

1.5.1.2 comply with any specifications set out in the Agreement;

1.5.1.3 be provided with due care and skill and be of high quality and workmanship;

1.5.1.4 be provided by appropriately qualified, competent, fit for work, skilled, experienced and professional personnel and all plant and equipment will be in good working order;

1.5.1.5 be of merchantable quality, fit for the purpose intended by Us and disclosed to You, and free of defects in materials, workmanship and design;

1.5.1.6 not infringe or contribute to the infringement of any intellectual property rights; and

1.5.1.7 be provided with copies of all material safety data sheets for dangerous goods;

1.5.2 any goods will be properly and safely packed and delivered to, and any services will be provided at, the place and within the time period specified in the Contract; and

1.5.3 any information supplied by You or Your Personnel relating to this Contract or the goods and/or services is true and correct.

1.6 You must ensure that Our purchase order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the goods and/or services.

2 Inspection and acceptance

2.1 We must have a reasonable time to inspect the goods after delivery. We may have access to Your premises to inspect or witness tests or work in progress on the goods, services or their results at any time by giving reasonable notice to You. Any payment or acknowledgement of receipt by Us before inspection or testing does not constitute acceptance of the goods and/or services or affect any of Your obligations under this Contract.

2.2 Without limiting any other provision of the Contract, You must ensure that We are provided with all applicable manufacturers' warranties relating to the goods.

2.3 If on inspection or testing, or after delivery, We reasonably believe any goods and/or services to be defective, We may during the term of this Contract and during any “**Defects Liability Period**” (being the earlier of 18 calendar months from the date of delivery or 12 calendar months from installation of the goods or completion of the services):

2.3.1 reject any defective goods by returning them to You;

2.3.2 reject the defective services by notifying You in writing;

2.3.3 require You to repair, rectify or resupply the defective goods and/or services at Your cost; or

2.3.4 have the defective goods and/or services repaired, rectified or resupplied at Your cost.

2.4 You must refund to Us, when requested, any payments made by Us in respect of defective goods and/or services which We reasonably reject.

2.5 You must reimburse Us for any reasonable expenses We incur in returning or repairing defective goods and in rectifying defective services.

2.6 If You repair or replace the goods and/or services during the Defects Liability Period, then those goods and/or services repaired or replaced have a further warranty for a period of 12 months from the date such repairs or replacements were completed.

3 Title and risk

- 3.1 Title to and risk in the goods does not pass to Us until We take delivery, inspect and accept the goods.
- 3.2 You warrant that You have complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to Us on that basis and We will be entitled to clear, complete and quiet possession of the goods.

4 Price, invoicing and payment

- 4.1 The consideration payable will be as set out in the purchase order and is inclusive of all duties and taxes (except GST) and costs incurred by You or Your Personnel in providing the goods and/or services including all charges for packaging, packing, insurance and delivery of the goods and the cost of any items used or supplied in conjunction with the services.

- 4.2 You must submit tax invoices to the email address identified on the purchase order:

- 4.2.1 upon delivery and acceptance of the goods as set out in clause 2, unless We have agreed to make a partial or full upfront payment in which case the invoice must reflect the amount agreed to be paid upfront; and/or
- 4.2.2 on completion of the services, unless the purchase order states that progress payments are to be made in which case the invoices must be issued in accordance with the progress payments schedule.

- 4.3 We will pay all correct tax invoices submitted to Us by electronic funds transfer within 30 days of receipt of invoice or receipt of goods and/or services (whichever is later) if You are an Australian business with annual turnover up to \$10 million or otherwise, within 30 days of the end of the calendar month in which the invoice was issued. Where We dispute an invoice in good faith, You will credit the disputed amount and We will pay the invoice net of the credit. Post resolution of the dispute, You will invoice the agreed balance (if any).

- 4.4 If any supply made under this Contract is or becomes subject to GST, the party to whom the supply is made must pay to the party making the supply in addition to any consideration payable an additional amount on account of GST. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the claim must exclude any amount for which that party is entitled to the benefit of an input tax credit.

- 4.5 If We are entitled to an exemption or concession concerning any tax or import duty or import tariff with respect to the goods and/or services, You must use all reasonable endeavours to apply for that concession or exemption and as far as possible promptly pass on to Us the benefit of that concession or exemption.

- 4.6 We may withhold, retain or set off from any payment due to You under this Contract any amounts payable by You to Us.

- 4.7 Unless otherwise agreed, any money payable to You is to be paid in Australian Dollars.

- 4.8 Unless otherwise specified, the price is not subject to escalation during the term of this Contract.

5 Insurance

- 5.1 You and Your Personnel must take out and maintain during the term of the Contract including any Defects Liability Period (at no cost to Us) the following insurance policies on terms, conditions and amounts which are acceptable to Us:

- 5.1.1 Public and Products Liability Insurance with a limit of liability of not less than twenty million dollars (\$20,000,000) for any one occurrence;
- 5.1.2 if the provision of the goods and/or services requires You or Your Personnel to provide professional advice or to prepare or provide any design, formula or specification, You must put in place Professional Indemnity Insurance with a minimum cover of not less than five million dollars (\$5,000,000) for any one claim and any Professional Indemnity policy must be maintained for a period of 7 years following completion of the Contract; and
- 5.1.3 any other insurance which is required by law for the time being in force in the State of Western Australia.

- 5.2 If the provision of the goods and/or services requires You or Your Personnel to enter or carry out any activities at Our premises then, in addition to the insurances required under clause 5.1, You and Your Personnel must take out and maintain during the term of the Agreement including any Defects Liability Period (at no cost to Us) the following insurance policies on terms, conditions and amounts which are acceptable to Us:

- 5.2.1 Workers Compensation and Employers Liability Insurance in accordance with the law of the State or Territory in which the goods are supplied or the services are performed (including common law liability as required by law) and where this Contract includes the provision of services, this insurance must include a Principal's Indemnity extension in favour of Us as principal under the Contract;

- 5.2.2 Motor Vehicle Third Party Injury and Property Damage Insurance with a limit of liability of not less than twenty million dollars (\$20,000,000) for any one occurrence, and if You carry dangerous goods, this policy must be endorsed to cover third party property damage resulting from the carriage of dangerous goods with a limit of liability of not less than five million dollars (\$5,000,000) for any one occurrence;

- 5.2.3 Compulsory Motor Vehicle Third Party Liability Insurance as required by law;

- 5.3 Upon request You must provide Us certificates of currency for any insurances required to be held by You or Your Personnel under this Contract. All costs incurred by Us as a consequence of You or Your Personnel not maintaining such insurances will be a debt due from You to Us.

6 Liability and indemnities

- 6.1 You and Your Personnel enter Our premises at Your and their Own risk.

- 6.2 You are liable for and must indemnify Us and keep Us indemnified from and against any liability and any loss or damage of any kind whatsoever (including reasonable legal fees and expenses), demands, claims and proceedings of any nature arising out of or in connection with:

- 6.2.1 Your breach of Intellectual Property (clause 1.5.1.6);
- 6.2.2 Your breach of Confidentiality (clause 9); or
- 6.2.3 any damage to or loss of property, or personal injury to or death of any person, caused or contributed to by Your negligent act or omission.

7 Suspension and termination

- 7.1 To the extent permitted by law, We may at any time and for any reason, suspend performance of Your obligations under this Contract by giving You notice. When You receive a notice of suspension from Us, You must suspend performance of the relevant obligations until such time as We direct You to resume performance of those obligations by notice in writing. Where the suspension of Your obligations by Us under this clause is not as a result of:
- 7.1.1 any default, action or omission by You or Your Personnel; or
 - 7.1.2 an event or circumstance which is beyond the control and without the fault or negligence of either party and which by the exercise of reasonable diligence neither party was able to prevent,
- 7.2 We will reimburse You within a reasonable time of receipt by Us of a detailed breakdown of Your claim for the extra costs necessarily and reasonably incurred by You as a direct consequence of the suspension, provided that You must use Your best endeavours to minimise such costs.
- 7.3 A party may immediately terminate this Contract by notice in writing to the other party if that other party becomes insolvent, bankrupt or is convicted of a criminal offence or if that other party or its Personnel breach any obligation under this Contract which is unable to be remedied or, if it is able to be remedied, is not remedied within 7 days of notice to do so. In the event that an event or circumstance referred to in clause 7.1.2 has continued for more than 6 months, either party is entitled to terminate this Contract by notice in writing to the other party.
- 7.4 To the extent permitted by law, We may terminate this Contract at any time and at Our sole discretion by giving You 7 days prior notice, in which case We must reimburse You for all work in progress or goods and/or services completed and expenses incurred up to the date of the notice of termination which cannot be reversed or mitigated by You applying best efforts.
- 7.5 Unless expressly stated otherwise, termination of this Contract for any reason does not affect the rights or obligations of a party which have accrued prior to termination.

8 Intellectual property

- 8.1 You must ensure that all intellectual property rights created in the course of supplying the goods and/or services under this Contract vest solely in Us. You may only use, disclose, copy or reproduce that intellectual property for the purposes of the Contract. Nothing in this Contract provides a party with any rights to any intellectual property held by the other party or its Personnel prior to the date of this Contract, provided that We have a non-exclusive, royalty free, perpetual and irrevocable licence to use, modify, adapt or sublicense any intellectual property owned by You or Your Personnel to the extent necessary for Us to exercise Our rights or perform Our obligations under this Contract and obtain the benefit of the goods and services. You must do all things reasonably necessary to give full effect to the rights and obligations contained in this clause 8.

9 Confidentiality

- 9.1 You and Your Personnel must not (except to the extent necessary to comply with Your obligations under this Contract) disclose to any person any information (including the terms of this Contract) owned or relating to Us or Our related bodies corporate or Personnel or the business or activities of these entities and individuals.

- 9.2 Nothing in this Contract prohibits disclosure of information which is in the public domain otherwise than as a result of a breach of this clause, or is required to be disclosed by law. The obligations in this clause 9 survive termination of this Contract.

10 General

- 10.1 You must ensure that Your Personnel comply with this Contract as if they were parties to it and You are liable for any acts, omissions and breaches of this Contract by Your Personnel.
- 10.2 The WesCEF Code of Conduct and Ethical Sourcing & Modern Slavery Policies apply to this Contract and are available on Our websites. The WesCEF Whistleblower Policy encourages You to confidentially report breaches or instances of alleged misconduct by Us or others to the STOPline Whistleblower Service on 1300 304 550.
- 10.3 This Contract is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. Any terms and conditions contained in any other documents, including Your documents, are expressly excluded.
- 10.4 Unless expressly stated otherwise, where a right or remedy is conferred under this Contract, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred under this Contract or according to law.
- 10.5 This Contract is governed by the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia. Any provision of this Contract which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this Contract.
- 10.6 No amendment of this Contract is effective unless made in writing and signed by each party. Any amendment will only be applicable to the specific purchase order and will not apply to past or future purchase orders nor oblige Us to agree to such an amendment for any other purchase orders.
- 10.7 No waiver of a right or remedy under this Contract is effective unless it is in writing and signed by the party granting it. A single or partial waiver or exercise of a right or remedy under this Contract does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Contract does not operate as a waiver or prevent further exercise of that or any other right or remedy.
- 10.8 You must, at all times, comply with all applicable laws and regulations relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) and procure the observance and performance of those laws and regulations by all persons performing activities under or in connection with this Contract on Your behalf or under Your supervision or control.
- 10.9 We reserve the right to obtain equivalent goods and/or services from any third party.
- 10.10 You must not, without Our prior written consent, assign or subcontract this Contract or any of Your rights or obligations under it. The appointment of subcontractors by You does not relieve You from any liability or obligation under this Contract.
- 10.11 You perform all services under this Contract as an independent contractor and not as Our agent or employee.
- 10.12 You will keep and maintain accurate and reasonably detailed books and financial records in connection with this Contract.