

General Conditions - November 2016

1. These General Conditions apply to all Purchase Orders between the Supplier and Cargill for the purchase of Services and Equipment by Cargill. The Supplier agrees to contract with Cargill subject to these General Conditions.
2. In these General Conditions, unless the context otherwise requires:
 - a) Authority means all persons and government bodies, who or which, by any statute, regulation, by-law, ordinance order or proclamation of any government (federal, state or local) have jurisdiction over the Services or the Site.
 - b) "Cargill" means Cargill Australia Limited (A.C.N. 004 684 173) and its Related Bodies Corporate, Cargill Processing Limited (A.C.N. 008 456 399), and Cargill Oilseeds Australia as applicable and includes their executors, administrators, successors and permitted assigns.
 - c) "Equipment" means the equipment (if any) to be supplied by the Supplier to Cargill pursuant to the Purchase Order and includes any consumables.
 - d) "OHS Requirements" mean the requirements of any legislation or advisory standard relating to occupational or workplace health and safety with which the Supplier or the Services must comply.
 - e) "Practical Completion" means that stage in the execution of the Services when the Supplier has completed all of the Services except for minor omissions or minor defects which do not prevent the Services from being reasonably capable of use for its intended purpose, and the Supplier has made good the Site and its surroundings.
 - f) "Purchase Order" means the document containing Cargill's order for the Services and Equipment which evidences Cargill's acceptance of the Supplier's offer to perform the Services and provide the Equipment.
 - g) "Related Bodies Corporate" takes its meaning from the Corporations Act 2001.
 - h) "Services" means the construction, installation, repair or other services (if any) to be supplied by the Supplier to Cargill pursuant to the Purchase Order and includes the Works.
 - i) "Site" means the area on which the Services are to be performed and includes all surrounding areas that may be used to perform the Services.
 - j) "Works" means the works (if any) which are specified on the Purchase Order as the result of the provision of the Equipment and/or the Services, including any variation, rectification or replacement work.
 - k) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - l) A reference to conduct includes an omission, statement and undertaking, whether or not in writing.
 - m) A reference to dollars and \$ is to Australian currency.
 - n) Mentioning anything after includes, including, for example or similar expressions, does not limit what else might be included.
 - o) Nothing in these General Conditions is to be interpreted against a party solely on the ground that the party put forward these General Conditions or a relevant part of them.
3. The Supplier will:
 - a) conform to any required specifications, requirements and representations set forth in the Purchase Order; and
 - b) perform the Services and the Works to the satisfaction of Cargill in a good, proper and workmanlike manner and to the standard of professional care, skill, judgment and diligence expected of a competent and experienced contractor experienced in performing work of the same or similar nature and in conformity with industry standards and accepted professional practices.
4. The Supplier must perform the Services so that at Practical Completion:
 - a) the Services will be to the reasonable satisfaction of Cargill, in accordance with the Purchase Order; and
 - b) to the extent that the Supplier designs any parts of the Services, those parts will be fit for their intended purpose.
5. Where the Supplier considers that there is any ambiguity or discrepancy in or between the documents comprising the Purchase Order, it must promptly advise Cargill in writing, who will give the Supplier a direction as to the interpretation to be followed.
6. Time is of the essence in every respect and the Supplier will perform the Services within the specified dates and times stipulated in the Purchase Order and otherwise provided for under these General Conditions.
7. The Supplier must keep Cargill informed of the progress of the Services.
8. At all times while the Services are being performed on the Site, the Supplier must have a representative on the Site who has the authority to accept instructions from Cargill.
9. The Supplier must not suspend the progress of the Services or any part of it except where directed to do so by Cargill under this clause 9 or allowed by law. Cargill may give the Supplier a direction to recommence the Services the subject of a direction to suspend and the Supplier shall immediately comply with such direction. The Supplier shall have no entitlement to additional fees as a result of the suspension.
10. Cargill reserves the right to defer the performance of the Service or delivery of the Equipment at any time, due to any cause or circumstance beyond Cargill's control.
11. The Supplier must assign to Cargill the benefit of any guarantee or warranty which is given in relation to any Equipment and which is assignable. The Supplier must also give notice of the assignment to the relevant manufacturer, supplier or repairer of the Equipment.

12. The Supplier will be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating performance of the Services.
13. Unless otherwise specifically noted on the Purchase Order, the Supplier will provide and pay for all labour, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary or incidental for the proper execution and completion of the Services (whether or not they are expressly provided for in the Purchase Order) and the Supplier will have no entitlement to additional fees or reimbursements as a consequence of supplying all materials and doing all things incidental to the satisfactory performance and completion of the Services.
14. The Supplier will pay all taxes, duties, fees, levies imposts or charges which arise in relation to the sale or supply of the Equipment of the Services and will secure all permits and licences necessary for the performance of the Services unless otherwise instructed in writing by Cargill. Notwithstanding any other provision in this agreement or the Purchase Order, when requested by Cargill, the Supplier must provide a written statement signed by the Supplier or a director of the Supplier (or such other person as may be approved by Cargill) in a form approved by Cargill regarding the Supplier's compliance with its obligations to date in respect of workers compensation, insurance, payroll tax, remuneration and payment to contractors.
15. The Supplier must:
 - a) comply with the provisions of all Acts of parliament, ordinances, regulations and by-laws and lawful requirements of all Authorities for the time being in force and affecting or in any way relating to the Site or the Services;
 - b) obtain all permits and pay all fees required for the performance of the Services;
 - c) comply with the requirements of any relevant industry code and standard and all relevant Cargill policies and practices and standards published by Standards Australia Limited (unless there are more stringent provisions in this agreement);
 - d) notify Cargill if the Services do not comply with or meet any of the above and provide an explanation as to how it will be rectified by the Supplier at its cost.
16. The Supplier will be responsible and liable for the acts and omissions of all its employees, sub-contractors, agents and all other persons performing any of the Service for and on behalf of the Supplier ("Agents") and agrees to pay, reimburse and indemnify and keep indemnified Cargill against any claims arising from the actions or omissions of any such Agent. Supplier shall ensure that its Agents at all times comply with the obligations of the Supplier under this agreement and the Purchase Order. The Supplier acknowledges that, as between Cargill and the Supplier, the Supplier is solely responsible for these matters.
17. The Supplier must maintain sufficient insurance with a reputable corporation licensed to carry on insurance business in Australia on terms that a reasonable and prudent person would be likely to accept to protect the Supplier from all claims including, but not limited to claims for damages for bodily injury, death and damage to property which may be brought by Cargill or any other person and which arise out of the supply of the Equipment, the Services and the Works under the Purchase Order. The insurance must be for not less than \$10,000,000 (unless otherwise agreed by Cargill). Certificates of insurance must be given to Cargill prior to commencement of the Services. The certificates must contain a provision that the policies of insurance will not be cancelled or amended unless at least twenty days prior written notice has been given to Cargill.
18. The Supplier warrants to Cargill that:
 - a) all materials and equipment incorporated in the Equipment or used in the supply of the Services will be new unless otherwise specified;
 - b) all Equipment, the Services and the Works supplied will be of good quality and free from faults and defects;
 - c) Cargill will receive free, good and clear title to all Equipment and all the all materials and equipment incorporated in the Equipment or used in the supply of the Services, and there are no claims, litigation or other proceedings pending or threatened with respect to these items;
 - d) none of the Services or Equipment provided under the Purchase Order will infringe on or otherwise violate any patent, copyright, trademark, trade secret or other intellectual property right of any third party.
19. The Supplier agrees to pay, reimburse, indemnify and hold harmless Cargill and its agents, directors, officers employees and customers from and against all claims, damages, liabilities, losses, fines, penalties, costs and expenses (**Losses**) including legal costs arising out of or in connection with the supply of the Equipment, the Services and the Works including, without limitation, failure of the Equipment or the Services supplied to meet specifications or warranties or to be otherwise fit for their intended purposes unless such Losses have been caused solely by the negligence of Cargill.
20. The Supplier releases Cargill and its Related Bodies Corporate from any liability or obligation to the Supplier, or any person claiming through or on behalf of the Supplier, in respect of:
 - a) physical loss of, or damage to, any real or personal property;
 - b) personal injury, disease or illness to, or death of, persons; or
 - c) financial loss or expense,arising out of the performance of the Services and its other obligations under the Purchase Order, unless caused solely by the negligence of Cargill.

Cargill may, at any time, direct that any materials and work forming any part of the Services be uncovered, recovered or tested. The cost of complying with such a direction shall be borne by the Supplier unless the work uncovered, recovered or tested complies with the requirements of the Purchase Order in which case the fees payable under the Purchase Order will include the Supplier's cost of complying with the direction. If Cargill, acting reasonably, is of the opinion that any

materials or work are not satisfactory or detects any defects in or omissions from the Services, then Cargill may direct the Supplier at the Supplier's expense and within the time directed by Cargill to:

- a) remove, rectify or replace the defective work or correct the omission; and
 - b) make good all damage, loss or injury to the Services caused by them.
21. If the Supplier fails to comply with a direction given by Cargill under clause 20 within the time specified by Cargill in the direction or, if none is specified, in a reasonable time, Cargill, after notifying the Supplier in writing, may have the work of removal, rectification or replacement carried out by other persons and the cost incurred by Cargill in having the work so carried out will be a debt due from the Supplier to Cargill.
22. The Supplier must:
- a) commence the Services on the commencement date in the Purchase Order and bring the Services to Practical Completion by the date for Practical Completion as stated in the Purchase Order; and
 - b) proceed with the Services with due expedition having regard to the program issued by Cargill (if any).
23. Upon request by Cargill, the Supplier must, within the time stipulated, deliver to Cargill a program for the performance of the Services in a form approved by Cargill. The Supplier must update the program as and when directed to do so by Cargill.
24. The Supplier must give Cargill at least five (5) business days' written notice of the date upon which the Supplier anticipates that Practical Completion will be reached. Within five (5) business days of that date, or within five Business days of the date of Practical Completion, Cargill must give the Supplier either a certificate stating the date on which Practical Completion was reached or written reasons for not doing so. The certificate may include a list of minor omissions and defects which do not prevent the Services from being reasonably capable of use for its intended purpose. If Cargill issues written reasons for not issuing the certificate, then the Supplier must repeat the process set out in this clause until Cargill gives a certificate.
25. The defects liability period will commence on the date of Practical Completion and will continue for the period stated in the Purchase Order or, if no period is stated, 12 months. At any time up to ten (10) business days after the expiry of the defects liability period, Cargill may direct the Supplier to rectify an omission or defect in the Services. The Supplier must comply with any direction within the time and at the times stated in the direction, or if no time is stated, promptly. If the Supplier fails to comply with such a direction or where the rectification work is required urgently, Cargill may have the work performed by others. The cost to Cargill of having the work performed will be a debt due from the Supplier to Cargill.
26. Cargill may withhold payments on account of or in connection with:
- a) defects or delay in Equipment or Services supplied which the Supplier has not remedied to the satisfaction of Cargill within the timeframe specified by Cargill, acting reasonably;
 - b) breach of any of the terms and conditions of the Purchase Order and these General Terms by the Supplier;
 - c) bankruptcy, insolvency, dissolution or liquidation proceedings are instituted by or against the Supplier;
 - d) any negligent acts, errors, omissions, or wilful misconduct of Supplier and its Agents;
 - e) Cargill having any basis for bringing a claim against the Supplier under the Purchase Order.
27. Notwithstanding any other provision in the Purchase Order or this agreement, if the Supplier has issued a final invoice prior to the date of Cargill's certificate, the Supplier's final invoice does not become due and payable until five (5) business days after the later of:
- a) the date Cargill gives the certificate in clause 25; and
 - b) the date the Supplier delivers to Cargill full unencumbered title in the Equipment and the Services.
28. The Supplier will be responsible for initiating, maintaining and supervising all safety precautions and programmes in connection with supply of the Equipment and the Services and will comply and ensure that all Agents comply with all Cargill's rules and policies to the extent they are made known to Supplier, including without limitation, those rules involving health, safety, the environment, and security, when working at or around any of Cargill's facilities.
29. The price, timing and specification of Equipment and Services to be performed under the Purchase Order may be changed only by another written purchase order signed by Cargill's duly authorised representative.
30. Cargill's rights under the Purchase Order are in addition to any rights and remedies which Cargill may have under the Competition and Consumer Act (2010) or similar State and Territory legislation.
31. To the extent that consideration under the Purchase Order is expressed as being GST exclusive, if GST is payable, or notionally payable, on a supply made under or in connection with the Purchase Order, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the GST Amount). Subject to the prior receipt of a valid tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge. Where any indemnity, reimbursement or similar payment under the Purchase Order is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability. If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
32. Unless the context requires otherwise, words and phrases used in clause 32 that have a specific meaning in the GST law (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (C'th)) have the same meaning in this clause.

33. (a) The parties agree to use reasonable commercial efforts to resolve by negotiation any dispute that arises between them under or in connection with the Purchase Order and these General Conditions. (b) If a dispute or issue arises under or in connection with the Purchase Order and these General Conditions (including a breach or alleged breach) which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at an operational level, a party concerned about the dispute or issue may notify the other party. Senior management representatives of the parties will then endeavour in good faith to agree upon a resolution. (c) Should the management representatives fail to reach a resolution within five business days (or such alternate time frame agreed by the parties) the parties may agree to mediation of the dispute. (d) If mediation fails, or if either party states that it does not wish to proceed with mediation, then either party may commence legal proceedings against the other. (e) Unless prevented by the nature of the dispute, the parties will continue to perform their obligations while attempts are made to resolve the dispute.
34. Subject to any law to the contrary, provided the Supplier and its Agents have not indicated otherwise, the Supplier authorises Cargill to collect and use any information related to the Seller and its Agents and the performance of the Purchase Order (which includes but is not limited to the Seller and its Agents' personal information) for the purpose of managing the Cargill's commercial relationship with the Supplier. The Supplier agrees and acknowledges that Cargill may transfer information overseas and disclose it to others (including, without limitation, contractors and buyers). The Supplier can withdraw its consent at any time by calling Cargill on 03 9268 7200. Cargill's Privacy Policy, located at www.cargill.com.au contains information about how personal information held by Supplier Seller may be accessed and corrected and how complaints can be made and are managed. If the Supplier wishes to give Cargill any information about an individual other than itself, then it agrees to ensure the individual to whom that information relates agrees that Cargill may use and disclose information about him or her in accordance with this clause 35.
35. The law of the State of Victoria applies to the Purchase Order. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.
36. A failure to exercise or a delay in exercising any right, power or remedy under the Purchase Order does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
37. The rights, powers and remedies of a party under the Purchase Order are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.
38. Any provision of the Purchase Order that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Purchase Order nor affect the validity or enforceability of that provision in any other jurisdiction.
39. In the event of any inconsistency between the provisions of the documents that constitute the Purchase Order, the following will prevail in the following order:
 - a) the terms of the Purchase Order; and
 - b) the General Conditions.

November 2016