

Wesfarmers Chemicals, Energy and Fertilisers Limited

Purchase Order – Standard Terms and Conditions

1 Provision of goods and/or services

- 1.1 The term **'Supplier'** means the contractor named in the Purchase Order; **'Company'** means the Wesfarmers Group Member specified in the Purchase Order; and **'Personnel'** means the employees, directors, officers, representatives, agents, contractors or subcontractors of a Party (but references to Company Personnel does not include Supplier Personnel); **'Parties'** means Supplier and Company (each being a **'Party'**).
- 1.2 The Parties agree to be bound by the attached Purchase Order and these Standard Terms and Conditions (collectively, the **'Contract'**). In the event of any conflict, discrepancy or ambiguity between the documents of the Contract, the terms of the Purchase Order will take precedence.
- 1.3 If a Party or its Personnel enters or carries out any activities at the other Party's premises, that Party must:
- 1.3.1 perform all services in a manner that is safe and complies with all applicable laws, regulations, legislation and the relevant Party's policies (including relevant site rules) 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 activities on the premises;
 - 1.3.3 ensure that the premises are left secure, clean, orderly and fit for immediate use and at its own cost remove all rubbish and surplus materials related to the services; and
 - 1.3.4 if requested by the other Party, remove any Personnel from the premises who fail to comply with any requirements under the Contract or the other Party's reasonable instructions or who engages in any inappropriate behaviour and promptly provide a suitable replacement.
- 1.4 The Supplier and its Personnel must:
- 1.4.1 obtain and maintain (at the Supplier's own expense) any licences, permits or consents necessary for providing the goods and/or services under the Contract;
 - 1.4.2 in carrying out any activities under or in connection with the Contract, 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 standard consistent with that of a Relevant Supplier.
- 1.5 The Supplier represents and warrants that:
- 1.5.1 the goods and/or services (as applicable) will:
 - (a) comply with all relevant legislation, standards and industry best practices;
 - (b) comply with the specifications set out in the Contract;
 - (c) be provided with due care and skill and will be of high quality and workmanship;
 - (d) 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;
 - (e) be of merchantable quality, fit for their intended

- purpose and free of defects in materials, workmanship and design; and
 - (f) not infringe or contribute to the infringement of any intellectual property rights;
 - 1.5.2 be supplied together with copies of all material safety data sheets for dangerous goods;
 - 1.5.3 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
 - 1.5.4 any information supplied by the Supplier or its Personnel relating to the Contract or the goods and/or services is true and correct.
- 1.6 The Supplier must ensure that the 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.
- 1.7 The Company may, after consulting with the Supplier, at any time direct a variation (including an addition or omission) to the goods and/or services by giving notice in writing to the Supplier.
- 1.8 Where the Company directs a variation under clause 1.7:
- 1.8.1 the Price must be adjusted according to agreed value for the variation or failing agreement a reasonable amount determined by the Company; and
 - 1.8.2 the Company must adjust the Delivery Date on a fair and reasonable basis.
- 1.9 Where the Company omits any part of the goods and/or services under clause 1.7, it may elect to procure the goods and/or carry out those services itself or engage a third party to supply the goods and/or carry out those services.

2 Inspection and acceptance

- 2.1 The Supplier must:
- 2.1.1 deliver, or arrange for delivery of, the goods to the Delivery Location on or before the Delivery Date; and/or
 - 2.1.2 perform the services on or before the Delivery Date, in accordance with the terms of the Contract.
- 2.2 The Company may at any time and at its absolute discretion, extend the Delivery Date by written notice to the Supplier.
- 2.3 The Company may:
- 2.3.1 at any time prior to the delivery of the goods and/or prior to or during the performance of the services; or
 - 2.3.2 at any time after delivery of the goods and/or performance of the services,
- inspect and/or test the goods and/or services to ensure that the goods and/or services are in accordance with the Contract.
- 2.4 In respect of any such inspection or testing carried out pursuant to clause 2.3.1 the Supplier must permit the Company (or its nominee) to carry out any such inspection and/or testing and provide such reasonable access (to the Supplier's premises, or otherwise) as the Company or its nominee may reasonably require. No such inspection and/or testing, or any payment or acknowledgement of receipt by the Company before such inspection and/or testing constitutes acceptance of the delivery of the goods and/or completion of the services or affect any of the Supplier's obligations under the Contract.

WesCEF Entities Goods and Services Purchase Order Terms and Conditions

- 2.5 Without limiting any other provision of the Contract, the Supplier must ensure that the Company is provided with, or obtains the benefit of, all applicable manufacturers' warranties relating to the goods.
- 2.6 If on inspection or testing, the Company reasonably believes any goods and/or services to be defective, the Company may (as the context requires):
- 2.6.1 reject any defective goods by returning them to the Supplier at the Supplier's cost; or
 - 2.6.2 reject the defective services by notifying the Supplier in writing; and
 - 2.6.3 require the Supplier to repair, rectify or resupply the defective goods and/or services at the Supplier's cost; or
 - 2.6.4 have the defective goods and/or services repaired, rectified or resupplied at the Supplier's cost,
- provided that:
- 2.6.5 no such action by the Company shall relieve the Supplier of its obligation to procure the delivery of the goods and/or performance of the services by or on the Delivery Date (which may be extended by the Company (acting in its absolute discretion) by notice in writing to the Supplier); and
 - 2.6.6 to the extent that title to the whole or any part of the goods has not passed to the Company in accordance with clause 3.1.1, the Supplier must refund the Company, when requested, any payments made by the Company in respect of defective goods and/or services which are reasonably rejected under this clause 2.6.
- 2.7 If on inspection or testing the Company is satisfied the goods and/or services have been delivered or completed (as applicable) in accordance with the Contract, the Company must notify the Supplier in writing that:
- 2.7.1 the goods are accepted by the Company; and/or
 - 2.7.2 the services have been completed in accordance with the Contract.
- 2.8 The Supplier must reimburse the Company for any reasonable expenses the Company incurs in returning or repairing defective goods and in rectifying defective services under clause 2.6.
- 2.9 The Company may, at any time prior to the expiry of the Defects Liability Period:
- 2.9.1 reject any defective goods by returning them to the Supplier; or
 - 2.9.2 reject the defective services by notifying the Supplier in writing;
- and,
- 2.9.3 require the Supplier to repair, rectify or resupply the defective goods and/or services at the Supplier's cost; or
 - 2.9.4 have the defective goods and/or services repaired, rectified or resupplied at the Supplier's cost,
- and clauses 2.6.6 and 2.8 shall apply.
- 2.10 If the Supplier repairs or replaces the goods and/or services during the Defects Liability Period, then the Defects Liability Period for those goods and/or services repaired or replaced must be extended for a period of 12 months from the latest date on which such repairs or replacements were completed.
- 2.11 The Company's rights under this clause 2 are without limitation to any of its rights otherwise arising at law.
- 3 Title and risk**
- 3.1 Title to, property in and ownership of the goods will pass to the Company when the earliest of the following events occurs:
- 3.1.1 payment for the goods (and, if part payment, only to the extent of the value of the part payment);
 - 3.1.2 notification of the Company's acceptance of the goods in accordance with clause 2.7; or
 - 3.1.3 incorporation of the goods with any works or other property already owned by the Company.
- 3.2 The Supplier is responsible for the care of, and bears the risk of loss or damage to the goods due to any cause until the Company notifies the Supplier of its acceptance of the goods in accordance with clause 2.7.
- 3.3 The Supplier warrants that the Supplier has complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to the Company on that basis and the Company is and will be entitled to clear, complete and quiet possession of the goods upon acceptance in accordance with clause 2.7.
- 4 Price, invoicing and payment**
- 4.1 In consideration of the supply of the goods and/or services, the Company must pay the Supplier the Price. The Price is inclusive of all duties and taxes (except GST) and costs incurred by the Supplier or its 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 The Supplier must submit tax invoices to the email address identified on the Purchase Order upon the later of:
- 4.2.1 acceptance of the goods by the Company as set out in clause 2.7.1; and/or
 - 4.2.2 notification of completion of the services to the satisfaction of the Company in accordance with clause 2.7.2, 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 Unless otherwise specified in the Purchase Order, the Company must pay all validly issued and correct tax invoices submitted by electronic funds transfer within 30 days of receipt of that invoice or receipt of goods and/or services (whichever is later) if the Supplier is 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. If the Company disputes an amount of an invoice, it must pay the undisputed portion by the due date for payment. Where the Company has disputed an amount under this clause 4.3, it must provide written notice to the Supplier specifying its reasons for disputing the amount withheld.
- 4.4 Within 5 Business Days of the Supplier's receipt of the Company's reasons under clause 4.3, representatives from the Supplier and the Company will meet on a good faith basis to resolve the disputed amount withheld.
- 4.5 Where agreed by the parties under clause 4.4, the Company will pay the Supplier by electronic funds transfer the agreed withheld amount within 2 Business Days that agreement. The payment under this clause 4.5 will finally resolve the dispute and the Supplier will have no further claim in respect of the withheld payment under clause 4.3.
- 4.6 If the Company is entitled to an exemption or concession concerning any tax or import duty or import tariff with respect to the goods and/or services, the Supplier must use all reasonable endeavours to apply for that concession or exemption and as far as possible promptly pass on to the Company the benefit of that concession or exemption.
- 4.7 All references to monetary amounts are amounts in Australian Dollars unless expressly stated otherwise in the Contract.
- 4.8 Unless otherwise specified, the Price is not subject to escalation during the term of the Contract and is only subject to adjustment in accordance with the terms of the Contract.
- 4.9 The Company may deduct from moneys otherwise due to the

WesCEF Entities Goods and Services Purchase Order Terms and Conditions

Supplier any debt or other moneys due from the Supplier to the Company under the Contract.

- 4.10 If any payments under the Contract are subject to withholding or deduction of taxes which may be required by law at the source of payment:
- 4.10.1 the payer shall provide the payee with all pertinent information to aid in the making of a claim in respect of any such withholding taxes available to the payee for use as a credit, refund or deduction in any relevant tax jurisdiction;
 - 4.10.2 the payer will pay the taxes so deducted or withheld to competent authorities; and
 - 4.10.3 the payee authorises the payer to deduct and withhold such taxes from required payments under the Contract.

5 Insurance

- 5.1 The Supplier must, at its own cost, take out and maintain the following insurance policies on the following terms, conditions and amounts:
- 5.1.1 Public and Products Liability Insurance for the term of the Contract (including any Defects Liability Period), 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 the Supplier or its Personnel to provide professional advice or to prepare or provide any design, formula or specification, Professional Indemnity Insurance with a limit of liability not less than ten million dollars (\$10,000,000) for any one claim and any Professional Indemnity Insurance policy must be maintained for a period of 7 years after the term of the Contract; and
 - 5.1.3 any other insurance which is required by law.
- 5.2 If the provision of the goods and/or services requires the Supplier or its Personnel to enter or carry out any activities at a Company premises then, in addition to the insurances required under clause 5.1 the Supplier and its Personnel must take out and maintain, at its own cost, during the term of the Contract, including any Defects Liability Period, the following insurance policies on the following terms, conditions and amounts:
- 5.2.1 Workers Compensation and Employers Liability Insurance in accordance with the law (including common law liability as required by law);
 - 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 the Supplier carries 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; and
 - 5.2.3 Compulsory Motor Vehicle Third Party Liability Insurance as required by law.

5.3 Upon request the Supplier must provide certificates of currency for any insurances required to be held under the Contract.

5.4 The Supplier must bear the cost of any excesses in the insurances required to be taken out and maintained under this clause 5.

6 Liability and indemnities

6.1 The Supplier is liable for and indemnifies the Wesfarmers Group Members against any Loss or Claim arising out of or in connection with any breach of the Contract by the Supplier. The Supplier's liability under this clause 6.1 is reduced proportionately to the extent that a negligent act or omission of a Wesfarmers Group Member or breach of the Contract by the Company contributed to any such Loss or Claim.

6.2 Subject to clause 6.4, the total aggregate liability of the Supplier, whether in contract, in tort (including but not limited to

negligence), in equity, under any warranties or indemnities, by operation of statute or otherwise, will, to the extent permitted by law, be limited to the total Price payable over the term of the Contract.

- 6.3 The limitation of liability under clause 6.2 does not apply to any liability arising from:
- 6.3.1 amounts recoverable under a policy of insurance required to be maintained by the Supplier (or would have been recoverable but for any act or omission of the Supplier);
 - 6.3.2 Willful Misconduct by the Supplier or its Personnel;
 - 6.3.3 an indemnity given at clause 6.4;
 - 6.3.4 breach of clause 8;
 - 6.3.5 the warranty given at clause 10.1;
 - 6.3.6 the indemnity given at clause 13.4; or
 - 6.3.7 rectification of defects and damage caused by defects.

6.4 Notwithstanding any other provision of the Contract, a Party (**Indemnifier**) is liable for and must indemnify the other Party (**Other Party**) (which in the case of the Company includes the Wesfarmers Group Members) and keep the Other Party indemnified against any Loss or Claim arising out of or in connection with:

- 6.4.1 the Indemnifier's breach of clause 9;
- 6.4.2 any damage to or loss of property, or personal injury to or death of any person, caused or contributed to by the Indemnifier's negligent act or omission; or
- 6.4.3 the Indemnifier's actual or alleged infringement of any intellectual property rights of a third party.

7 Suspension and termination

7.1 To the extent permitted by law, the Company may at any time and for any reason, suspend performance of the Supplier's obligations under the Contract by giving the Supplier written notice. When the Supplier receives a notice of suspension, the Supplier must immediately suspend performance of the relevant obligations until such time as the Company directs the Supplier to resume performance of those obligations by notice in writing. Where the suspension of the Supplier's obligations under this clause is not the result of:

- 7.1.1 any default, act or omission by the Supplier or its 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 or overcome,

The Company will reimburse the Supplier within a reasonable time of receipt of a detailed breakdown of the Supplier's claim for the actual and verifiable extra costs necessarily and reasonably incurred by the Supplier as a direct consequence of the suspension under this clause 7.1, provided that the Supplier uses its best endeavours to minimise such extra costs.

7.2 A Party may immediately terminate the 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 the Contract which is unable to be remedied or, if it is able to be remedied, is not remedied within 7 days of notice from the other Party 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 the Contract by notice in writing to the other Party.

7.3 To the extent permitted by law, a Party may terminate the Contract at any time and in its sole discretion by giving the other Party not less than 30 days' prior written notice.

WesCEF Entities Goods and Services Purchase Order Terms and Conditions

7.4 If the Company terminates the Contract under clause 7.3, the Company must:

reimburse the Supplier for all work in progress or goods and/or services completed and for all expenses incurred up to the date of termination under clause 7.3 which cannot be avoided or mitigated by the Supplier applying best efforts.

Provided that the amounts to which the Supplier is entitled under clause 7.4 will be a limitation upon the Company's liability to the Supplier arising out of or in connection with the termination of the Contract under clause 7.3 and to the extent permitted by law, the Supplier will not be entitled to make (nor will the Company be liable upon) any claim arising out of or in connection with the termination of the Contract, other than for the amount payable under clause 7.4.

7.5 If the Supplier terminates the Contract under clause 7.3:

7.5.1 the Supplier must promptly engage with the Company on a good faith basis after serving the written notice and the Parties must act in good faith to agree the work or goods and/or services that will be performed and/or supplied from the date of the notice to the date of termination;

7.5.2 the Supplier may only charge for work in progress or goods and/or services completed and for all expenses incurred up to the date of termination which cannot be reversed or mitigated by the Supplier applying best efforts; and

7.5.3 The Company may claim for, and the Supplier must pay, the Company's loss, costs and expenses reasonably incurred in connection with termination of the Contract under clause 7.3.

7.6 Unless expressly stated otherwise, termination of the 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 The Supplier warrants that:

8.1.1 it owns or has a valid right to use all intellectual property rights subsisting in any matter, thing or process used or to be used by the Supplier for the purpose of supplying the goods and/or services or otherwise in relation to the Contract; and

8.1.2 the use of such intellectual property rights will not infringe the intellectual property rights of any third party.

8.2 The Supplier must ensure that all intellectual property rights created in the course of supplying the goods and/or services under the Contract vest solely in the Company. The Supplier may only use, disclose, copy or reproduce that intellectual property for the purposes of the Contract.

8.3 Nothing in the Contract provides a Party with any rights to any intellectual property held by the other Party or its Personnel prior to the date of the Contract, provided that the Supplier provides the Company with a non-exclusive, royalty free, perpetual and irrevocable licence to use, modify, adapt or sublicense any intellectual property owned by the Supplier to the extent necessary for the Company to exercise its rights and obtain the benefit of the goods and services supplied under the Contract.

8.4 The Supplier must do all things reasonably necessary to give full effect to the rights and obligations contained in this clause 8.

9 Confidentiality

9.1 The Parties and their respective Personnel must not (except to the extent necessary to comply with the obligations under the Contract) disclose to any person any information (including the terms of the Contract) owned or relating to the other Party or their respective related bodies corporate or Personnel or the

business or activities of these entities and individuals.

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

10 Modern Slavery

10.1 The Supplier represents, warrants and undertakes, throughout the term of the Contract, that neither the Supplier nor any of its directors, officers, employees, agents, representatives contractors or subcontractors engage in Modern Slavery.

10.2 The Supplier must:

10.2.1 have and maintain throughout the term of the Contract its own policies and procedures that are intended to ensure compliance with the warranties contained in clause 10.1 and the minimum standards set out in Annexure A of the Company's Ethical Sourcing and Modern Slavery Policy and as updated by written notice from time to time), including Modern Slavery related due diligence procedures for its suppliers and subcontractors;

10.2.2 at the reasonable request of the Company, and within a reasonable period of time, provide the Company with all information required to enable the Company to comply with its reporting obligations with respect to Modern Slavery; and

10.2.3 notify the Company promptly in writing if it becomes aware of any actual, reasonably suspected or anticipated Modern Slavery in the operations of the Supplier or engaged in by any entity in its supply chain in connection with the Contract.

10.3 Breach of this clause 10, gives rise to a right for the Company to immediately terminate the Contract.

11 Anti Bribery

11.1 The Supplier must:

11.1.1 at all times comply with all applicable laws, statues, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (Australia) (**Relevant Requirements**);

11.1.2 not, directly or indirectly, give or offer or promise to give, receive, or agree to accept, any payment, gift or other benefit or advantage which violates a Relevant Requirement;

11.1.3 have in place and maintain throughout the term of the Contract its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

11.1.4 not prepare, approve or execute any contract or other document or make any record in connection with the Contract that the Supplier knows, or ought reasonably know, is false, inaccurate or misleading;

11.1.5 promptly report to the Company any request or demand for an undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract which will or may be in breach of the Relevant Requirements; and

WesCEF Entities Goods and Services Purchase Order Terms and Conditions

11.1.6 procure, and shall be responsible for, the observance and performance of the Relevant Requirements by all persons performing services or providing goods in connection with the Contract on behalf of the Company or under its supervision or control.

12 Policies, Standards, Rules & Instructions

- 12.1 The Supplier and its Personnel must comply with Company policies, standards, rules and instructions, which are available via the Company's [website](https://.com.au/) under "Supplier Management" (<https://.com.au/>).
- 12.2 The Company's Whistleblower Policy encourages parties to confidentially report breaches or instances of alleged misconduct by the Company or others to the Whistleblower Hotline Service on 1800 173 918.

13 Privacy Act

- 13.1 The Supplier will comply with all Privacy Laws (whether or not Supplier is a bound by the Privacy Act) in the performance of its obligations under the Contract.
- 13.2 Without limiting its obligations under clause 13.1, the Supplier must:
 - 13.2.1 use Personal Information only as necessary to fulfil its obligations under the Contract;
 - 13.2.2 only collect, access, use, store, disclose or otherwise deal with Personal Information in accordance with Privacy Laws; and
 - 13.2.3 not disclose Personal Information except:
 - (a) to its Personnel to the extent necessary for fulfilling the Supplier's obligations under the Contract;
 - (b) as required by law, subject to the Supplier giving notice to the Company promptly when it becomes aware that such a disclosure may be required; or
 - (c) with the express prior written consent of the Company;
 - 13.2.4 ensure that any person, including its Personnel, to whom Personal Information is disclosed under the Contract does not do or omit to do anything which, if done or omitted to be done by the Supplier, would constitute a breach of this clause 13;
 - 13.2.5 ensure that all subcontractors to whom Personal Information is disclosed comply with Privacy Laws and that subcontractors agree to provisions having the same effect as this clause 13;
 - 13.2.6 not do any act, engage in any practice, or omit to do any act or engage in any practice that:
 - (a) would result in a breach of a Privacy Law if the Privacy Law applied to those things done, engaged in or omitted to be done by Supplier; or
 - (b) would cause the Company to breach or be taken to breach a Privacy Law;
 - 13.2.7 take all reasonable steps to ensure that Personal Information is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure;
 - 13.2.8 notify the Company as soon as practicable if Supplier becomes aware of any breach or alleged breach of Supplier's obligations under this this clause 13 or a Privacy Law, and comply with any reasonable direction from the Company with respect to remedying that breach; and
 - 13.2.9 take reasonable steps to ensure that Personal Information it uses or discloses to the Company in providing the supply of goods and/or services is up-to-

date, complete and relevant having regard to the nature of the supply of goods and/or services.

- 13.3 The Supplier, at the expiry or termination of the Contract, must at the Company's election either destroy, or return in a format acceptable to the Company, all Personal Information.
- 13.4 The Supplier will indemnify the Company, its officers, directors, employees, agents, successors and assignees against any Loss or Claim relating to any failure by the Supplier to comply with its obligations under this clause 13.

14 Data Security

- 14.1 The Supplier must take all necessary steps to ensure that any and all Data it holds or controls in connection with the Contract is protected against misuses and loss, and from unauthorised access, modification and disclosure, and that only authorised employees or authorised agents or subcontractors of the Supplier with a legitimate role in fulfilling the Supplier's obligations under the Contract have access to the Data.
- 14.2 Without limiting its obligations under clause 14.1, the Supplier must promptly, and no later than 24 hours after the relevant incident, notify the Company in writing about any Data Breach that has occurred or that the Supplier suspects (or ought reasonably to suspect) has occurred.

15 GST

- 15.1 If an amount of GST is payable on a supply of goods and/or services under the Contract:
 - 15.1.1 the Company must pay, in addition to the other consideration payable or to be provided for the supply of goods and/or services, an amount equal to the GST payable on the supply of goods and/or services; and
 - 15.1.2 the Company must pay the additional amount to the Supplier at the same time as the other consideration under the Contract,

provided that the Company need not pay the additional amount until the Supplier gives the recipient a tax invoice (except where the recipient is required to issue the tax invoice).
- 15.2 If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply of goods and/or services varies from the GST amount paid to the Supplier, the Parties will account to each other for the difference. If the Company is required to pay an additional amount under this clause 15, and the reason an additional amount is payable is because of the occurrence of an adjustment event, the Company need not pay the additional amount until the Supplier gives the recipient an adjustment note (except where the recipient is required to issue the adjustment note).
- 15.3 If an amount paid by the Supplier as and for GST under the Contract is overpaid, and Division 142 of the GST Act applies to that amount, then the amount is not recoverable from the Supplier unless the Supplier can recover that amount from the Commissioner of Taxation after taking all reasonable steps to do so.
- 15.4 Clauses 15.1 and 15.2 do not apply to the extent that the GST on the supply of goods and/or services is payable by the recipient under Division 83 or Division 84 of the GST Act.
- 15.5 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 (or representative member if the party is a member of a GST group) may obtain an input tax credit.
- 15.6 Unless clearly indicated to the contrary, all amounts referred to in the Contract, other than in this clause 15, are GST exclusive.
- 15.7 Unless clearly indicated to the contrary, "GST" and other terms used in this clause 15 (and in other provisions of the Contract referable to GST) have the meanings given to those terms by the GST Act and a reference to a 'Supplier', 'recipient' or 'Party'

WesCEF Entities Goods and Services Purchase Order Terms and Conditions

includes a reference to the representative member of any GST group of which that Supplier, recipient or Party is, or was at the relevant time, a member.

- 15.8 This clause 15 will continue to apply after expiration or termination of the Contract.

16 General

- 16.1 Each Party must ensure that its Personnel comply with the Contract as if they were parties to it, and a Party is liable for any acts, omissions and breaches of the Contract by its Personnel.
- 16.2 Unless expressly stated otherwise, where a right or remedy is conferred under the Contract, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred under the Contract or according to law.
- 16.3 The 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 the 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 the Contract.
- 16.4 No amendment of the 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 the Company to agree to such an amendment for any other Purchase Order.
- 16.5 No waiver of a right or remedy under the 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 the 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 the Contract does not operate as a waiver or prevent further exercise of that or any other right or remedy.
- 16.6 The Company reserves the right to obtain equivalent goods and/or services from any third party. Nothing in the contract operates to prevent the Supplier from supplying equivalent goods and/or services to any third party.
- 16.7 A Party must not, without the other Party's prior written consent (not to be unreasonably withheld or delayed), assign or subcontract the Contract or any of its rights or obligations under it.
- 16.8 The appointment of subcontractors does not relieve a Party from any liability or obligation under the Contract.
- 16.9 The Supplier must perform all services under the Contract as an independent contractor and not as the Company's agent or employee.
- 16.10 The Supplier will keep and maintain accurate and reasonably detailed books and financial records in connection with the Contract.

17 Other Definitions

'**APPs**' means the Australian Privacy Principles and any new or replacement privacy principles included in the *Privacy Act 1988* (Cth).

'**Business Day**' means any day other than a Saturday, Sunday or public holiday in Western Australia.

'**Claim**' means any claim, cause of action, proceeding, suit, demand or claim for payment made against a Party, however it arises and whether it is present or future, fixed or unascertained or actual or contingent:

- (a) that arises out of, or in any way in connection with, the Contract;
- (b) that arises out of, or in any way in connection with, the goods and/or services; or

(c) at law or in equity.

'**Data**' means all data, information (including Personal Information), text, drawings or other materials.

'**Data Breach**' means misuse, interference or loss relating to, or unauthorised access to, modification of, or unauthorised disclosure of Data.

'**Defects Liability Period**' means the period commencing on the later of the Delivery Date or actual date of delivery of the goods or actual date of completion of the services and expiring 12 months later, as may be extended under clause 2.10.

'**Delivery Date**' means any date for delivery of the goods and/or completion of the services specified in the Purchase Order, as may be extended under the Contract.

'**Delivery Location**' means any delivery location specified in the Purchase Order.

'**goods**' '**services**' and '**goods and/or services**' means the goods and services (as applicable) described in the Purchase Order and everything necessary or incidental to the supply of those goods and services.

'**GST Act**' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'**Loss**' means any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

'**Modern Slavery**' means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence under anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to, the *Criminal Code Act 1995* (Cth), sch1 divisions 270 and 271. For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

'**Personal Information**' has the same meaning as in the Privacy Act.

'**Price**' means all amounts payable (other than GST) by the Company in respect of the Goods and/or Services as set out in the Purchase Order, as may be adjusted under the Contract.

'**Privacy Act**' means the *Privacy Act 1988* (Cth) (including APPs).

'**Privacy Laws**' means the Privacy Act, the *Spam Act 2003* (Cth) and any other requirement under law or industry code relating to the handling of Personal Information.

'**Relevant Supplier**' means a supplier that is highly skilled and qualified with experience in Australia in the supply of goods and/or services similar to the goods and/or services being supplied under the Contract and the performance of obligations similar to the Supplier's obligations under the Contract.

'**Wesfarmers Group Member**' means any one of the following:

- (a) Wesfarmers Chemicals, Energy & Fertilisers Limited, ABN 48 008 797 402;
- (b) CSBP Limited, ABN 81 008 668 371;
- (c) Wesfarmers Energy (Gas Sales) Limited, ABN 27 058 451 997;
- (d) Wesfarmers Gas Limited, ABN 63 008 795 471;
- (e) Wesfarmers Kleenheat Gas Pty Ltd, ABN 40 008 679 543;
- (f) Wesfarmers LPG Pty Ltd, ABN 32 009 214 831;
- (g) Australian Gold Reagents Pty Ltd, ABN 93 009 140 121;

WesCEF Entities Goods and Services Purchase Order Terms and Conditions

- (h) Australian Vinyls Corporation Limited ABN 15 078 558 595;
- (i) ModWood Technologies Pty Ltd, ABN 91 094 868 201;
- (j) Australian Light Minerals Pty Ltd (ALM), ABN 88 143 526 096;
- (k) MH Gold Pty Ltd, ABN 51 068 814 204; and
- (l) any associated entity (within the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*) of the above entities.

'Wilful Misconduct' means:

- (a) any fraud, fraudulent concealment or dishonesty;
- (b) any conduct, act or omission which the person in question knew would be wrongful;
- (c) any conduct, act or omission with substantially harmful consequences which is done or omitted to be done intentionally and in relation to which the person is indifferent or consciously disregards whether it is wrongful or what the consequences might be; or
- (d) any illegal or malicious act or omission.