

**1. INTERPRETATION**

1.1 In these Terms and Conditions:

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Date for Completion** means the date and time (if a time is specified) for completion of the Services as notified by Hexion to the Supplier.

**Delivery Time** means the date and time (if a time is specified) of delivery of the Goods as notified by Hexion to the Supplier.

**Force Majeure Event** means an industry wide strike, lock out or other industrial dispute, breakdown of systems or network access, flood, fire, earthquake, act of God, explosion or accident and any other matter, occurrence or event beyond the control of the relevant party and the effect of which could not have been prevented or mitigated by reasonable steps available to the relevant party.

**Goods** means goods supplied or to be supplied by the Supplier to Hexion under the Purchase Order.

**Hexion** means Hexion Pty Ltd ABN 32 004 271 827.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPS Register** means the national online register established under the PPS Act.

**Purchase Order** means the order for Goods and/or Services attached to these Terms and Conditions.

**Purchase Price** means the tax exclusive amount Hexion must pay to the Supplier for the Goods or Services as specified in the Purchase Order.

**Services** means services supplied or to be supplied by the Supplier to Hexion under the Purchase Order.

**Sourcing Agreement** means an agreement for the sale and purchase of any of the Goods or Services between the Supplier and Hexion to which these Terms and Conditions are annexed.

**Specifications** means the specifications of the Goods or Services as described in the Purchase Order or agreed by the parties.

**Supplier** means the person named in the Purchase Order and the Sourcing Agreement (if applicable) as the supplier and any associated entity as defined in section 50AAA of the *Corporations Act 2001* (Cth) of the Supplier who accepts the Purchase Order.

**Terms and Conditions** means the terms and conditions of purchase set out in this document and includes any additional terms and conditions agreed in writing between the Supplier and Hexion, including any Sourcing Agreement.

1.2 A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, reenactments or replacements of any of them.

**2. APPLICATION**

2.1 The supply of Goods and Services by the Supplier to Hexion is made solely in accordance with these Terms and Conditions, any Sourcing Agreement and the applicable Purchase Order. Any terms and conditions of supply that may be incorporated in any acceptance of order or quotation or any other document provided by the Supplier have no legal effect.

2.2 If there is any inconsistency between the following documents, that inconsistency will be resolved using the following order of precedence: any Sourcing Agreement, these Terms and Conditions and the Purchase Order.

**3. PRICE AND PAYMENT**

3.1 Hexion agrees to pay the Supplier the Purchase Price less any discount applicable, as invoiced by the Supplier to Hexion (by the issue of a valid tax invoice), within 60 days of the end of the month in which the Goods or Services are delivered or provided.

3.2 A party must make payment due under these Terms and Conditions and any applicable Sourcing Agreement in Australian currency (unless otherwise agreed by the parties) by electronic transfer of funds to a bank account specified by the payee.

3.3 Unless otherwise agreed to in writing or authorised by Hexion, the Purchase Price will apply without increase or addition.

**4. CANCELLATIONS AND DEFERRALS**

4.1 Hexion will have the right to alter or cancel the Purchase Order at any time before the Goods or Services are delivered or performed by written notice to the Supplier.

4.2 If the Purchase Order is altered or cancelled under clause 4.1, Hexion will pay reasonable costs, losses, charges and expenses incurred by the Supplier in connection with the cancellation or alteration.

4.3 The Supplier will provide Hexion with an invoice setting out the costs in reasonable detail associated with the cancellation or alteration within 10 days from the date of receipt by the Supplier of the cancellation or alteration and Hexion will pay the amount set out in the invoice within 60 days of the invoice being received.

4.4 Hexion will only be liable to pay the Supplier under this clause 4 where the Supplier has provided verification of costs incurred to the reasonable satisfaction of Hexion and Hexion approves the costs in writing before the Supplier proceeds with the cancellation or alteration.

**5. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES**

5.1 In the delivery of Goods, the Supplier will (at its expense) use packaging methods and materials that:

- prevent infestation, rust, contamination and water or other damage to the Goods during delivery and storage;
- where practical and appropriate, use returnable containers; and
- comply with all relevant laws, regulations and standards, and any specifications of Hexion (including, without limitation, with respect to labelling),

and the Supplier will be liable for damages to the Goods caused by packaging, packing methods or storage methods which do not comply with this clause 5.1.

5.2 The Supplier will deliver the Goods to Hexion to the location nominated by Hexion at the Delivery Time and in accordance with any delivery instructions.

5.3 The Supplier must use its best endeavours to anticipate and avoid delays in respect of the Delivery Time. If the Supplier becomes aware of any actual or potential delay, the Supplier must immediately notify Hexion of that actual or potential delay (including specifying the cause and impact of that delay) and take all reasonable steps to comply with the applicable Delivery Time.

5.4 If no Delivery Time is specified, the Supplier will deliver the Goods within a reasonable period of receiving the Purchase Order.

5.5 The Supplier will perform the Services by the Date for Completion or, if no Date for Completion is specified, the Supplier will perform the Services within a reasonable period of receiving the Purchase Order.

5.6 If the Goods or Services are not delivered or performed in accordance with clauses 5.1 to 5.5, Hexion may:

- terminate some or all of the Purchase Order without liability to the Supplier under clause 4; and/or
- agree a later Delivery Time or Date for Completion and at its option charge the Supplier for any increase in costs or expenses incurred due to the late delivery or performance.

5.7 The Supplier will be responsible for ensuring it (and its employees, agents and sub-contractors, if any):

- complies with all health and safety requirements of Hexion when delivering the Goods to, or performing Services at, a Hexion site;
- provides all information and assistance as Hexion reasonably requires; and

- complies at all times with all reasonable directions of Hexion in delivering the Goods and performing the Services.

**6. TITLE**

6.1 Title to the Goods will pass to Hexion on payment.

6.2 The risk of loss or damage to the Goods from any cause will remain with the Supplier and will not pass to Hexion until delivery of the Goods under clause 5.

**7. ACCEPTANCE**

7.1 The Supplier must permit Hexion to inspect the Goods at the location nominated by Hexion under clause 5.2, including, at the election of Hexion, before or after payment for, or acceptance of, the Goods by Hexion.

7.2 Hexion may reject any Goods or Services which fail to comply with the applicable Purchase Order (including excess quantities), the Specifications, these Terms and Conditions or any Sourcing Agreement by notice in writing to the Supplier.

7.3 In addition to any other remedy or right it may have, Hexion may return rejected Goods to the Supplier at the Supplier's cost.

7.4 If Hexion rejects any Goods or Services the Supplier must, in addition to any other remedy or right Hexion may have, repay any money paid by Hexion in relation to the rejected Goods or Services.

7.5 Rejected Goods will on rejection become the property of the Supplier, and if held by Hexion, will be held at the Supplier's risk.

**8. FORCE MAJEURE**

8.1 If the Supplier is unable to carry out any obligation under these Terms and Conditions or any Sourcing Agreement due to a Force Majeure Event that obligation is suspended for the duration of the Force Majeure Event provided that the Supplier:

- gives Hexion immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- uses all reasonable endeavours to mitigate the effects of the Force Majeure Event.

8.2 If the Supplier is unable to perform all or any material part of a Purchase Order in accordance with these Terms and Conditions and any Sourcing Agreement for more than six months after the written notice in respect of the occurrence of the Force Majeure Event is given to Hexion under clause 8.1, Hexion may terminate these Terms and Conditions, any Purchase Orders and any Sourcing Agreement.

**9. EXCLUSIONS AND LIMITATIONS**

9.1 Nothing in these Terms and Conditions or any Sourcing Agreement operates to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, where to do so would contravene that statute or cause any part of these Terms and Conditions or any Sourcing Agreement to be void.

9.2 To the maximum extent permitted by law, Hexion will not be liable to the Supplier for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data). Hexion's liability to the Supplier will otherwise be limited to an amount not exceeding the Purchase Price paid by Hexion.

**10. INDEMNITY**

10.1 The Supplier agrees to indemnify and keep indemnified Hexion, its directors, employees, representatives, successors and assigns, harmless, from and against all liabilities, losses, damages, actions, claims, judgments, costs and expenses (including legal fees), resulting from or arising in connection with:

- any personal injury, death or physical loss of or damage to property caused, or contributed to, by the Supplier or its employees, agents or subcontractors (if any);
- the Supplier's negligence or willful misconduct;
- any failure by the Supplier to perform any of its obligations in accordance with these Terms and Conditions, any Sourcing Agreement or any Purchase Order; and
- any defect in the Goods or Services supplied by the Supplier under these Terms and Conditions, any Sourcing Agreement or any Purchase Order.

10.2 The provisions of clauses 9 and 10 survive the termination of these Terms and Conditions and/or any Sourcing Agreement.

**11. WARRANTIES**

11.1 The Supplier warrants that:

- the Goods and Services will comply with the applicable Purchase Order, the Specifications, these Terms and Conditions and any Sourcing Agreement;
- no Goods contain any hazardous substances the use of which is restricted under applicable legislation;
- the Goods will be acceptable within the meaning of the Australian Consumer Law, will be acceptable in quality, appearance and finish, will be free from defects in design, material and workmanship and will be safe and durable;
- the Goods and Services will be fit for their intended purpose as notified to Supplier and for all other purposes for which Goods or Services of that kind are commonly supplied;
- the Services will be performed by appropriately skilled personnel in a competent, proper, timely and efficient manner, with due care and skill, and be at the standard of a prudent, competent, professional and experienced provider of similar Services;
- it has the expertise in the handling, processing, storage, transportation and sale of the Goods and the performance of the Services, and will provide to Hexion all relevant safety information relating to the Goods and Services;
- the Services will be performed in accordance with Hexion's reasonable directions and in accordance with all applicable laws and regulations and in a manner which will not cause Hexion to contravene any laws or regulations; and
- it has the right and title to the goods, free from all security interests and encumbrances.

11.2 These warranties in relation to the Goods and Services are in addition to those implied by or available at law and survive acceptance of the Goods and Services.

11.3 The Supplier must not vary or change any of the designs, manufacturing processes or procedures previously used in connection with the supply of the Goods and Services without Hexion's prior written approval.

**12. INSURANCE**

12.1 The Supplier must take out and maintain insurance policies in respect of all risks that a prudent person would insure in relation to the conduct of the Supplier's business and the provision of the Goods and Services including but not limited to workers' compensation insurance as required by applicable laws and public liability insurance.

12.2 The Supplier will provide to Hexion on request, a copy of all certificates of currency for the insurance described in this clause 12.

**13. INTELLECTUAL PROPERTY**

13.1 The Supplier grants to Hexion a non exclusive, perpetual, irrevocable, royalty free licence to use any materials provided to Hexion by the Supplier in the course of or in connection with supplying the Goods or performing the Services.

13.2 The Supplier warrants to Hexion that the provision and use of the Goods and Services supplied under the Purchase Order do not infringe the intellectual property rights of any third party.

13.3 If any of the Goods or Services infringes the intellectual property rights of any third party, the Supplier will at its cost obtain for Hexion a licence to use the Good or Service, or replace or modify the Good or Service in a manner to the reasonable satisfaction of Hexion.

- 13.4 The Supplier indemnifies and will keep indemnified Hexion against any claims against Hexion, its directors, employees or representatives alleging that the possession or use of the Goods or Services infringes the intellectual property rights of any third party.
- 13.5 Any technical information, drawings, specifications or data of Hexion provided by Hexion to the Supplier remains the exclusive property of Hexion.
- 13.6 The Supplier unconditionally and irrevocably assigns to Hexion all rights, title and interest in all intellectual property rights that may be developed for Hexion in the course of the Supplier supplying the Goods and Services, effectively immediately on the creation of any such rights.
- 14. TAXES**
- 14.1 In this clause 14, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 14.2 If a party makes a supply under or in connection with these Terms and Conditions in respect of which GST is payable, the consideration for the supply but for the application of this clause 14.2 is increased by the amount of GST payable in respect of that supply and Supplier shall first provide Hexion with a valid tax invoice in respect of such supply.
- 14.3 Any consideration to be paid or provided for a supply made under or in connection with these Terms and Conditions, unless specifically described in these Terms and Conditions as GST inclusive, does not include an amount on account of GST.
- 15. CONFIDENTIAL INFORMATION AND ANNOUNCEMENTS**
- 15.1 Where the Supplier has access to or is provided with information, drawings, specifications, or data of Hexion, the Supplier must keep the information confidential, and not (except to the extent required by law) disclose the confidential information to any person without the prior written consent of Hexion.
- 15.2 The Supplier must immediately return to Hexion any confidential information which has been provided to it under clause 15.1 on the termination of these Terms and Conditions or any Sourcing Agreement, or at the request of Hexion.
- 15.3 The Supplier must not make or authorise a press release, public announcement or publication relating to these Terms and Conditions, any Sourcing Agreement or any Purchase Order, or the subject matter or provisions of these Terms and Conditions, any Sourcing Agreement or any Purchase Order, except as required by law or with the prior written consent of Hexion.
- 16. PPS ACT**
- 16.1 Terms used in this clause 16 which are defined in the PPS Act have the same meaning given to them in the PPS Act.
- 16.2 Hexion will be entitled to register a security interest on the PPS Register in relation to the whole or part (as applicable) of the Goods as soon as property in the Goods passes to it under clause 6.
- 16.3 The Supplier and Hexion agree that these Terms and Conditions are not intended to and do not create a security interest in favour of the Supplier.
- 16.4 To the extent that the Supplier is deemed to hold a security interest, the Supplier agrees that it will not register any security interest, or any financing statement in relation to it, or take any steps to do so.
- 17. MODERN SLAVERY**
- 17.1 The Supplier represents and warrants to Hexion that, as at the Delivery Time and the date of entering into any Sourcing Agreement, the Supplier:
- (a) has not been convicted of any offence involving Modern Slavery and, to the best of the Supplier's knowledge having made reasonable enquiries, neither its Related Bodies Corporate nor Representatives have been convicted of any offence involving Modern Slavery;
  - (b) does not engage in any conduct or omission which would amount to an offence involving Modern Slavery and, to the best of the Supplier's knowledge having made reasonable enquiries, neither its Related Bodies Corporate nor Representatives engage in any conduct or omission which would amount to an offence involving Modern Slavery;
  - (c) to the best of the Supplier's knowledge having made reasonable enquiries, is not and has not been, and its Related Bodies Corporate and Representatives are not or have not been, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence involving Modern Slavery;
  - (d) has no knowledge of any Modern Slavery currently occurring within its operations and supply chain; and
  - (e) takes and will continue to take reasonable steps to identify the risk of, and reduce or prevent the occurrence of, Modern Slavery within its operations or supply chains.
- 17.2 In this clause 17:
- (a) **Modern Slavery** means:
    - (i) *slavery and human trafficking* as defined in the *Modern Slavery Act 2015* (UK);
    - (ii) *modern slavery* as defined in the *Modern Slavery Act 2018* (Cth);
    - (iii) *modern slavery* as defined in the *Modern Slavery Act 2018* (NSW); and
    - (iv) any other analogous conduct or practices;
  - (b) **Related Bodies Corporate** has the meaning given to that term in sections 9 and 50 of the *Corporations Act 2001* (Cth); and
  - (c) **Representatives** means, in relation to a person or entity, its officers, employees, contractors, subcontractors, suppliers, agents, advisers or financiers.
- 18. GENERAL**
- 18.1 The Supplier will comply with all applicable laws and regulations in the manufacture, supply and delivery of the Goods and performance of the Services.
- 18.2 The Supplier may not subcontract any or all of its obligations under these Terms and Conditions or any Sourcing Agreement without Hexion's prior written consent. Any subcontract by the Supplier of the performance of any of its obligations does not limit or otherwise affect the Supplier's obligations to Hexion under these Terms and Conditions or any Sourcing Agreement.
- 18.3 No waiver by Hexion of any breach of these Terms and Conditions or any Sourcing Agreement by the Supplier will be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power, or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.
- 18.4 Hexion may set off any sums due to the Supplier against any money owing by the Supplier to Hexion.
- 18.5 The Supplier agrees that Hexion enters into these Terms and Conditions on its own behalf and also as agent and trustee for each related body corporate (as defined in section 50 of the *Corporations Act 2001* (Cth)) of Hexion and each related body corporate of Hexion, may enforce these Terms and Conditions as if it were a party to these Terms and Conditions.
- 18.6 A term or part of a term of these Terms and Conditions that is illegal or unenforceable may be severed from these Terms and Conditions and the remaining terms or parts of the terms of these Terms and Conditions continue in force.
- 18.7 These Terms and Conditions do not create a relationship of employment, trust, agency or partnership between the parties.
- 18.8 The Supplier must not assign these Terms and Conditions, or any rights under these Terms and Conditions, without the prior written consent of Hexion.
- 18.9 These Terms and Conditions cannot be amended or varied except in writing signed by the parties.
- 18.10 Except as expressly provided to the contrary in these Terms and Conditions or any Sourcing Agreement, Hexion may, in its absolute discretion and conditionally or unconditionally:
- (a) give or not give any approval or consent, or exercise or not exercise any discretion or make or not make any decision or determination, under these Terms and Conditions or any Sourcing Agreement; and
  - (b) withhold any approval or consent.
- 18.11 Any indemnity or obligation of confidence under these Terms and Conditions is independent and survives termination of these Terms and Conditions or any Sourcing Agreement. Any other term by its nature intended to survive termination of these Terms and Conditions and/or any Sourcing Agreement survives termination of these Terms and Conditions and the Sourcing Agreement (as applicable).
- 18.12 These Terms and Conditions, any Sourcing Agreement and the other documents referred to in them constitute the entire agreement between the parties as to their subject matter.
- 18.13 These Terms and Conditions are governed by the law applicable in Victoria, Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria, Australia.