

**AGROPUR GENERAL TERMS & CONDITIONS OF PURCHASE**

**1. DEFINITIONS**

Capitalized terms used herein shall have the following meanings:

"**Affiliate**" means, with regards to either party to the Agreement, any entity that controls, is controlled by, or is under common control with the applicable party through the exercise of voting power or otherwise.

"**Agreement**" means, collectively, these General Terms & Conditions together with any applicable Order and Specifications.

"**Buyer**" means Agropur Cooperative or any of its Affiliates buying Goods or Services from Supplier pursuant to the terms of an Order, including without limitation, Agropur inc. and Agropur MSI, LLC.

"**General Terms & Conditions**" means these Agropur General Terms & Conditions of Purchase.

"**Goods**" means any goods, products, materials or equipment purchased by Buyer from Supplier pursuant to an Order.

"**Order**" means any purchase order or other ordering mechanism as approved and used from time to time by Buyer for ordering Goods or Services from Supplier.

"**Services**" means any services purchased by Buyer from Supplier pursuant to an Order and including any deliverables provided by Supplier in connection with such services.

"**Specifications**" means any written specifications, requirements and/or standards with respect to the Goods and/or Services that have been provided or approved in writing by Buyer.

"**Supplier**" means the entity selling Goods or Services to the Buyer pursuant to an Order placed by Buyer, including any Supplier's Affiliates.

**2. GENERAL**

The provisions of the General Terms & Conditions shall apply to any purchase of Goods and/or Services by Buyer from Supplier pursuant to an Order. Each Order is an offer for which acceptance is expressly limited to the provisions of such Order and the General Terms & Conditions. No additional or different terms or conditions will be binding upon Buyer with respect to the purchase of any Goods and/or Services from Supplier, unless otherwise agreed to by Buyer pursuant to a written agreement signed by Buyer and Supplier specifically referencing the Agreement (the "**Specific Purchase Agreement**"), in which case the provisions of such Specific Purchase Agreement shall prevail and supersede any contrary or conflicting provisions of the Agreement.

If Supplier tenders to Buyer any Goods and/or Services subject to an Order submitted by Buyer but not otherwise accepted by Supplier, Supplier shall be deemed to have accepted the Order upon acceptance of such Goods and/or Services by Buyer.

**3. PRICES AND QUANTITY**

3.1 Supplier shall supply the Goods and/or Services to Buyer at the prices specified in the Order. Supplier warrants that prices shown on the Order shall be complete and no additional charges of any type (e.g. shipping, packaging, labeling, custom duties, etc.) shall be added or borne by Buyer without Buyer's express written consent. Such prices may not be modified or changed without the prior written consent of Buyer.

3.2 Quantity and description of Goods or Services will be specified in the Order. Unless otherwise specifically indicated in the Order, nothing in the Agreement shall constitute a commitment from Buyer to purchase any specific quantity, amount or type of Goods or Services.

**4. PAYMENT TERMS**

4.1 All invoices for purchase of Goods or Services hereunder shall be payable by Buyer within 60 days from the receipt of an accurate and complete invoice from Supplier, unless a shorter period is agreed to in writing by Buyer in exchange for a discount or other consideration. If an invoice is received by Buyer before delivery of the Goods or Services, the time period for payment of the invoice will not commence until the date the Goods or Services are actually delivered to Buyer. A proper invoice must show the purchase order number, the

Buyer's item number, a full description, quantity and any other information as requested by Buyer or required by law.

4.2 Buyer has the right to set-off any sums due to Supplier under the Agreement against any sums due from Supplier to Buyer under the Agreement.

**5. DELIVERY**

5.1 Unless otherwise agreed to by Buyer in any applicable Order, all deliveries shall be made DDP (Incoterms 2010) destination. Transfer of risk shall take place when the Goods have been properly delivered to Buyer. All deliveries must be made during normal business hours to the Buyer's facility indicated in the Order, unless otherwise agreed to in writing by Buyer.

5.2 Time is of the essence in the delivery of Goods and Services, and Supplier shall promptly advise Buyer of any anticipated delays. If the Goods or Services are not delivered within the time specified or promised by Supplier, Buyer may, without liability and in addition to any of its other rights and remedies, reject such Goods or Services, cancel the Order and/or purchase substitute items and charge Supplier with any loss or damage incurred. Buyer shall also have the right to claim additional damages from Supplier, in case of total or partial failure of Supplier to execute the Order in accordance with the time schedule of delivery.

5.3 Supplier shall supply a certificate of analysis for each lot of Goods (where applicable) prior to shipment of Goods.

**6. REJECTION BY BUYER**

6.1 All Goods and Services are subject to inspection and acceptance by Buyer, provided however that Buyer has no such inspection duty prior to use or resale. Payment by Buyer for Goods or Services delivered hereunder shall not constitute acceptance thereof. Buyer may reject any non-conforming or defective Goods or Services that do not comply with the warranties set forth at Paragraph 7.

6.2 Subject to all of Buyer's other rights and remedies, if Buyer rejects any non-conforming or defective Goods, Buyer shall have the right to return such Goods for either full credit or a refund, at Buyer's option. The cost to store, ship and return rejected Goods shall be paid by Supplier.

6.3 Subject to all of Buyer's other rights and remedies, if Buyer rejects any non-conforming Services, Supplier shall correct and redeliver the Services, at Supplier's sole expenses, within ten (10) business days or such other period agreed to by the parties, failing which Buyer will have the right to receive either full credit or a refund, at Buyer's option.

6.4 Buyer reserves the right, without an obligation, to accept out-of-specification Goods and Services and take a reduction in price or other consideration equivalent to the reduction in value to Buyer.

**7. REPRESENTATIONS, WARRANTIES AND COMPLIANCE**

7.1 Each party represents and warrants to the other that: (i) it is validly organized and existing under the jurisdiction of its organization, (ii) it has the requisite power and authority to enter into the Agreement and perform its obligations under the Agreement, (iii) the Agreement constitutes a valid and binding agreement, enforceable against it in accordance with its terms, and (iv) the execution and performance of the Agreement will not result in the breach of any other agreement, covenant, court order, judgment or decree to which it is a party or by which it is bound.

7.2 Supplier hereby represents and warrants to Buyer that the Goods and Services (i) will be manufactured and performed in accordance with all applicable federal, state or provincial laws, regulations, ordinances, or governmental orders, and good manufacturing practices, (ii) are merchantable and fit for their intended purpose, provided that all food products and ingredients shall be fit and sufficient for human consumption, (iii) are marketable, of good quality and free from any defects, (iv) are not adulterated, mislabelled or misbranded, (v) conform to the Specifications and other requirements of the Agreement, (vi) are free and clear of all liens, claims or encumbrances, and (vii) do not violate or infringe any trademarks, patents, copyrights, trade secrets or other intellectual property rights of any third parties.

7.3 Supplier further represents and warrants to Buyer that (i) all Services supplied shall be performed in accordance with the Specifications and by personnel with the experience, training, skill and qualifications required to perform the Services in a timely, professional and workmanlike manner in accordance with the highest industry standards, and (ii) it has all necessary licenses, permits and rights to perform its obligations under the Agreement.

7.4 All representations and warranties of Supplier contained in the Agreement are in addition to all other warranties, express, implied or statutory applicable to Supplier or the Goods or Services, including additional statements regarding quality, facilities and operating standards made by Supplier.

7.5 Supplier shall maintain a quality assurance program relating to the manufacture of Goods which is consistent with the highest industry standards and which ensure the full traceability of materials used in the manufacture of Goods. Upon Buyer's request, Supplier shall communicate to Buyer all relevant information which will enable Buyer to identify the origin, place, date of manufacture and serial numbers of the Goods.

7.6 When delivering Goods and providing on-site Services, Supplier shall respect all rules and standards in force at Buyer's premises regarding health, safety, working conditions and the environment.

**8. INDEMNIFICATION**

Supplier shall indemnify and hold harmless Buyer from and against any and all claims, demands, damages, losses, liability or expenses, including without limitation, reasonable attorney's fees and costs of litigation, in any manner arising out of or related to (i) any breach by Supplier of any of its obligations, representations and warranties under the Agreement, (ii) any act or omission of Supplier or its agents, including without limitation, negligence, gross negligence, willful misconduct, fraud or intentional misconduct, and (iii) any claim for personal injury, death or property damages caused by the Goods or Supplier's performance (or non-performance) of the Services.

**9. CHANGES AND CANCELLATION**

Buyer reserves the right, at any time and without cause, to either change or cancel any Order, in whole or in part, including additions or deletions to quantities, upon notice to Supplier. In such case, the Buyer shall only be liable for direct costs reasonably and actually incurred by Supplier, if any, resulting from such change or cancellation.

**10. CONFIDENTIALITY**

10.1 Each party agrees that the terms of the Agreement as well as all proprietary, confidential and other non-public information which will be provided or has been previously provided by one party to the other in connection with the Agreement, whether orally, in writing, electronically or by any other means, shall (i) be treated as confidential, (ii) not be disclosed to any third party without the prior written consent of the disclosing party, and (iii) be used solely for the purpose of the Agreement. The provisions of this paragraph shall supplement and not supersede the terms set forth in any other nondisclosure agreement or confidentiality undertaking in effect between the parties (the "**Confidentiality Agreement**"), if any. In the event of any conflict between the provision of this paragraph and of any such Confidentiality Agreement, the most restrictive applicable provision shall control. The provisions of this paragraph shall survive for a period of five (5) years following the expiration or termination of the Agreement, provided that this paragraph shall continue in full force and effect with respect to any confidential information that constitutes trade secret for such additional period as such information remains a trade secret.

10.2 In addition, neither party shall make any public statements, declarations, advertising, press release or any other public divulgation related to the other party or Agreement, nor use the other party's name, logo or trademarks, without the other party's prior written consent.

11. **INTELLECTUAL PROPERTY RIGHTS**

Each party shall remain the owner of all of their respective intellectual property rights. Neither party is transferring to the other any ownership rights in its intellectual property as a result of the Agreement, unless otherwise specifically agreed to by the parties in a written document signed by the parties.

12. **ASSIGNMENT AND SUBCONTRACTING**

Supplier shall not assign the Agreement or any of its rights, interests or obligations under the Agreement, without the prior written consent of Buyer. Supplier shall not subcontract or delegate the performance of any of its obligations under the Agreement, in whole or in part, without the prior written consent of Buyer. Supplier shall in any cases remain fully liable for any acts or omissions of its subcontractors.

13. **INSPECTION**

Upon a prior reasonable written notice from Buyer, Supplier shall permit representatives of Buyer to have access to Supplier's facility where the Goods are manufactured, during ordinary business hours, to inspect, at Buyer's own expense, the premises, plant, storage facilities, equipment, methods, supplies, procedures and operations used or carried out by Supplier, in order to ascertain whether Supplier is complying with the provisions of the Agreement.

14. **INSURANCE**

At all times during the term of the Agreement, Supplier shall, at its sole expense, procure and maintain in full force and effect, without any limitation of its obligations or responsibilities under the Agreement, the following insurance coverage: a Comprehensive Commercial General Liability insurance to cover all Supplier's obligations, activities, Goods and Services, including coverage for property damage, personal injury or death, with a minimum limit of \$2,000,000 per occurrence.

Upon demand, Buyer shall be named as an additional insured on each insurance policy, and Supplier shall provide Buyer with insurance certificate(s) evidencing the foregoing insurance coverage.

15. **TERMINATION**

Buyer may, at any time, terminate the Agreement or any applicable Order, without liability to the Supplier and by notice to the Supplier, if (i) Supplier fails to comply with any provision of the Agreement and does not remedy such failure within seven (7) days from the receipt of a notice of default from Buyer, or (ii) Supplier becomes bankrupt or insolvent or makes a proposal or arrangements under any applicable bankruptcy or insolvency legislation, or if a receiver is appointed for Supplier.

16. **GOVERNING LAWS**

The Agreement shall be governed, construed and interpreted, in all respects, in accordance with (i) the laws of the Province of Quebec and the federal laws of Canada applicable therein with respect to any Order pursuant to which Goods or Services are delivered in Canada, and (ii) the laws of the State of Wisconsin with respect to any Order pursuant to which Goods or Services are delivered in the United States of America, in each case without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction. Each party further agrees to irrevocably submit to the exclusive jurisdiction of (i) the courts of the Province of Quebec located in the judicial district of Montreal with respect to any matter arising or related to any Order pursuant to which Goods or Services are delivered in Canada, and (ii) the state and federal courts of the State of Wisconsin for the District of La Crosse with respect to any matter arising or related to any Order pursuant to which Goods or Services are delivered in the United States of America, except that in each case actions to enforce a judgment or for specific performance which may be located elsewhere as necessary.

17. **FORCE MAJEURE**

Neither party shall be liable for any delay or failure of performance due solely to causes beyond its control without its fault or negligence, including without limitation, any act of God, natural disasters, wars, act of terrorism or sabotage; provided that the affected party shall promptly give to the other party a written notice of its inability to observe or perform its obligations hereunder and the reasons therefore, and further uses its best efforts to correct the reason for such

delay. If the delay or anticipated delay in Supplier's deliveries impairs its ability to meet its production schedules or otherwise interfere with its operations, Buyer may at its option, and without liability to Supplier, cancel any outstanding deliveries from Supplier in whole or in part.

18. **INDEPENDENT CONTRACTOR**

Each party is and shall remain an independent contractor with respect to all performance under the Agreement. The relationship between Buyer and Supplier is and will be that of seller and buyer and not a joint venture, partnership, principal-agent, employer-employee or franchisor-franchisee.

19. **MISCELLANEOUS**

19.1 Subject to the terms of any Specific Purchase Agreement or Confidentiality Agreement, the Agreement shall constitute the complete agreement between the parties with respect to the subject matter hereof and supercedes any and all prior and contemporaneous negotiations and agreements, whether oral or written, between the parties relating to the subject matter hereof. Without limiting the generality of the foregoing, no other terms, whether or not contained in any Supplier's quotation, order acknowledgment, confirmation, bill of lading or invoice provided by Supplier, shall in any way modify or supersede the Agreement.

19.2 Buyer shall have the right to amend, revise and update the General Terms & Conditions at any time upon providing written notice to Supplier.

19.3 If any provision of the Agreement is found invalid or unenforceable, that provision shall be severed and all other provisions of the Agreement shall remain in full force and effect.

19.4 The failure of either party to require performance by the other party of any provision of the Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of the Agreement constitute a waiver of any succeeding breach of the same of any other provision.

19.5 Paragraphs 8 (Confidentiality) and 10 (Indemnification) shall survive the performance of all Orders and the termination of the Agreement, as does any other provision of the General Terms & Conditions that, by its nature, must survive thereafter.

19.6 The Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties.

19.7 Supplier and each person signing on behalf of Supplier, represent that the person signing below is duly authorized to do so.

19.8 The Parties hereto have expressly requested that the Agreement and all documents related thereto be drafted in English. Les parties aux présentes ont exigé que le présent contrat ainsi que tout document s'y rapportant soient rédigés en langue anglaise.