

# Purchase order terms and conditions

Document no DMSID-85-27

<p><b>1. Application of these Terms and Conditions</b></p>	<p>These Terms and Conditions apply to all Purchase Order Documents electronically transmitted to the Supplier and constitute the entire agreement between the Company and the Supplier, unless otherwise stated in the Purchase Order Documents. If there is any conflict or inconsistency between the provisions of the Purchase Order Documents, the following order of precedence will be applied:</p> <ul style="list-style-type: none"> <li>(a) any signed agreement for the purchase of the Deliverables by the Company from the Supplier;</li> <li>(b) the Purchase Order; and</li> <li>(c) these Terms and Conditions.</li> </ul> <p>A Purchase Order is the only form of request that will be recognised by the Company as authority for the Supplier charging Deliverables to the Company's account.</p> <p>No terms or conditions supplied by the Supplier in response to a request for proposal, in a quote or through the acceptance or acknowledgment of a Purchase Order will be binding upon the Company.</p>
<p><b>2. Price</b></p>	<p>In consideration of the due and proper delivery or performance of the Deliverables subject of the Purchase Order Documents by the Contractor, the Company will pay to the Contractor the Price. Unless otherwise agreed in the Purchase Order Documents, the Price is:</p> <ul style="list-style-type: none"> <li>(a) inclusive of all charges including insurance, premiums and costs, leave entitlements, freight, packaging, packing and delivery costs and Taxes;</li> <li>(b) inclusive of the cost of any miscellaneous services of a kind which are commonly provided with the supply or performance of goods, services or software of the same or a similar nature to the Deliverables and any miscellaneous items of a kind which are commonly used or supplied in conjunction with goods, services or software of the same or a similar nature to the Deliverables; and</li> <li>(c) not subject to rise and fall, escalation or review.</li> </ul>
<p><b>3. Payment terms</b></p>	<p>Unless otherwise agreed in the Purchase Order Documents and subject to the Deliverables complying with the Purchase Order Documents, payments will be in accordance with the Company's standard payment terms of net 30 days from the end of the month in which the Supplier issues an invoice in accordance with the Purchase Order Documents. The month in which the Supplier issues an invoice is deemed to be the month in which Wilmar receives the invoice, irrespective of the date of the invoice. Payment is on account only. The Company may deduct from moneys otherwise due to the Supplier any debt or other moneys due and owing from the Supplier to the Company, or an amount the Company considers to be the subject of a bona fide claim against the Supplier.</p> <p>The Company may issue recipient created tax invoices (<b>RCTI</b>) for a taxable supply made for which the Company is required to make a payment under the Purchase Order Documents and the parties effect a written agreement in accordance with the conditions set out in <i>Goods and Services Tax Ruling GSTR 2000/10</i> as follows:</p> <ul style="list-style-type: none"> <li>(a) the Company can issue tax invoices in respect of such supplies by the Supplier in accordance with the Purchase Order Documents;</li> <li>(b) the Supplier will not issue tax invoices in respect of such supplies in accordance with the Purchase Order Documents;</li> <li>(c) each party acknowledges that, where applicable, it is registered for GST as at the date of the Purchase Order Documents and will notify the other party if it ceases to be registered;</li> <li>(d) the Company will issue an adjustment note to the Supplier for any adjustment event that arises in relation to a supply for which a RCTI has been issued; and</li> <li>(e) the agreement in this clause 3 and the Company's right to issue invoices under the Purchase Order Documents will terminate immediately if the Company cease to satisfy any of the requirements under the GST Legislation for issuing a RCTI.</li> </ul>
<p><b>4. Invoices</b></p>	<p>Invoices may only be rendered on or after delivery or performance of the relevant Deliverables and must show the Purchase Order number, item number and the name of the site or other location where the Deliverables were delivered or shipped or performed and be accompanied by evidence of delivery (in the form required by the Company).</p> <p>The Company will only be obliged to pay GST in respect of a supply if the Supplier has delivered a Tax Invoice in compliance with the GST Legislation to the Company.</p> <p>Notwithstanding any other provision to the contrary, if the Company considers it necessary to satisfy its obligations under the <i>Taxation Administration Act 1953 (Cth) (Act)</i> or the <i>Taxation Administration Regulations 1976 (Cth) (Regulations)</i>, the Company may withhold an amount from a payment made to the Supplier and pay the withheld amount directly to the Commissioner of Taxation (<b>Commissioner</b>).</p> <p>If the amount withheld in accordance with this clause 3 is paid by the Company to the Commissioner, it is deemed to have been paid to the Supplier.</p> <p>The Supplier agrees and acknowledges that it has no claim against the Company for any amounts withheld and paid to the Commissioner in accordance with this clause 4.</p>
<p><b>5. Quantity</b></p>	<p>For goods, the Supplier must deliver the quantity of Deliverables specified in a Purchase Order.</p>
<p><b>6. Inspection in progress</b></p>	<p>The Supplier agrees that the Company or its nominated agent has the right to inspect all work related to the Deliverables, upon the giving of reasonable notice, at any stage during engineering, manufacture, installation or performance. The Supplier will make this a condition of any sub-contracted work. The Company has the power to reject any work completed or being performed that does not conform to the Purchase Order. Such work must be rectified at no additional cost to the Company.</p>
<p><b>7. Engineering data</b></p>	<p>The Supplier must provide all engineering and other data required by the Company within the time stated in the Purchase Order Documents or, if no time is stated, then as notified in writing by the Company to the Supplier.</p>
<p><b>8. Deliverables that are goods</b></p>	<p>All Deliverables that are goods are received subject to the Company's right of inspection within a reasonable time after arrival at the place of delivery. If any Deliverables are found to be unsatisfactory, defective or of inferior quality or workmanship or fail to meet the specifications, warranties or any other requirements of the Purchase Order Documents (<b>Defective Deliverables</b>), the Company may:</p>

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	<ul style="list-style-type: none"> <li>(a) return those Defective Deliverables to the Supplier at the Supplier's risk and expense; or</li> <li>(b) require that the Supplier provide replacement Deliverables within the timeframe notified by the Company; or</li> <li>(c) withhold payment for the Defective Deliverables; or</li> <li>(d) if payment for the Defective Deliverables has already been made prior to inspection, require that the Supplier reimburse the Company for the purchase price and any costs incurred in the delivery or return of those Deliverables.</li> </ul>
<b>9. Transport and delivery</b>	<p>This clause applies to the supply of goods.</p> <p>The Company's standard requirement is delivery into the site/s as nominated in the Purchase Order, or as otherwise agreed between the parties. All Deliverables must be packed, marked and transported as specified in the Purchase Order Documents or in a proper and suitable manner.</p> <p>All Deliverables must be accompanied by the necessary shipping documents (including, without limitation, any export licenses, certificates of origin or permits) and by a delivery note that details the Deliverables and quotes the Purchase Order number and any other information the Company requires.</p> <p>The Supplier must, and must ensure that its Personnel and carriers:</p> <ul style="list-style-type: none"> <li>(a) comply with all laws and applicable codes and standards relating to the transport of the goods; and</li> <li>(b) implement appropriate policies and systems to ensure compliance with requirements regarding vehicle mass, vehicle dimension, load restraint, speed limits, driver fatigue, driving hours and rest periods,</li> </ul> <p>to the extent that any Deliverables are transported, the Supplier agrees to it or a subcontractor being named as the consignee or consignor (as applicable) on all transport documentation.</p>
<b>10. Property and risk in Deliverables</b>	<p>The Supplier warrants that the Deliverables are free and clear of all liens and encumbrances and that the Supplier has and will give the Company good title to the Deliverables.</p> <p>Unless otherwise agreed in the Purchase Order Documents, title to Deliverables that are goods passes to the Company upon the earlier of payment for the Deliverables and delivery of the Deliverables to the delivery place specified in the Purchase Order, provided that the Supplier bears the risk of loss or damage to the Deliverables until they are delivered to the delivery place.</p>
<b>11. Warranty</b>	<p>The Supplier warrants that the Deliverables will conform to the description set out in the Purchase Order Documents and any applicable codes, standards, specifications and laws and will be of good and merchantable quality, free from defects in material and workmanship and fit for the purpose for which they are provided (if known to the Supplier) or for which such Deliverables are normally provided (in any other case). This warranty is in addition to, and not to the exclusion of, any warranty or service guarantee stated in the Purchase Order Documents or implied by law.</p>
<b>12. Deliverables that are services</b>	<p>All Deliverables that constitute the supply of services by the Supplier or the presence of the Supplier or its employees, servants or agents on the Company's premises are subject to the following. The Supplier:</p> <ul style="list-style-type: none"> <li>(a) warrants that all work will be performed in compliance with all applicable laws and in a workmanlike manner;</li> <li>(b) must supply all labour, tools, equipment and materials necessary to complete the work;</li> <li>(c) must use its best endeavours not to impede or interfere with other work in progress on the Company's premises;</li> <li>(d) must not subcontract or assign the work or any part of the work without the Company's prior written consent;</li> <li>(e) must do all things necessary to ensure the safety of any persons impacted by the supply of services by the Supplier;</li> <li>(f) must do all things necessary to enable it and the Company to discharge their obligations under work, health, safety and environment laws;</li> <li>(g) and its workers (including its employees, agents and subcontractors):             <ul style="list-style-type: none"> <li>(i) enter the Company's premises at their own risk;</li> <li>(ii) must, at its own expense, obtain all requisite licences and permits and comply with all laws and regulations in connection with the work or installation of the Deliverables, including laws, regulations and codes of practice relating to health and safety (including work health and safety, electrical safety and heavy vehicle safety and the environment); and</li> <li>(iii) must comply with the work, health, safety and environment policies and regulations of the Company and with the reasonable directions and orders of the Company, its employees and authorised officers.</li> </ul> </li> </ul> <p>If any of the work is found to be defective or not in compliance with the Purchase Order Documents and the Supplier, on the Company's request, fails to remedy any defect or default to the Company's reasonable satisfaction of the Company, then the Company may engage a third party to re-perform that work and the cost will be a debt due by the Supplier.</p>
<b>13. Cancellation</b>	<p>The Company may, at its option, cancel a Purchase Order, or any part of a Purchase Order, in relation to any undelivered Deliverables. On cancellation:</p> <ul style="list-style-type: none"> <li>(a) the Supplier must cease manufacture and supply of, or the performance of, any Deliverables and do everything possible to mitigate any further costs being incurred;</li> <li>(b) the Company will reimburse the Supplier for any expenditure justifiably incurred by the Supplier prior to date of cancellation in respect of the Deliverables which cannot reasonably be otherwise recouped by the Supplier; and</li> <li>(c) except to the extent set out in paragraph 13(b), the Company's only obligation will be to pay for Deliverables delivered or performed (and accepted by the Company) prior to the date of cancellation.</li> </ul>
<b>14. Termination for default</b>	<ul style="list-style-type: none"> <li>(a) If the Supplier:             <ul style="list-style-type: none"> <li>(i) breaches of any of the terms in the Purchase Order Documents; or</li> <li>(ii) becomes insolvent or bankrupt,</li> </ul> <p>the Company may, at its option and without prejudice to any of its other rights, cancel any or all Purchase Order(s) with respect to any undelivered Deliverables and the Supplier will not be entitled to any compensation or reimbursement of costs or other expenses of any nature incurred either before or after cancellation in respect of such cancellation.</p> </li> <li>(b) On receiving a notice under clause 14(a), the Supplier must take any action relating to the termination of a Purchase Order reasonably required by the Company.</li> </ul>

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	<p>(c) Termination of a Purchase Order under this clause 14 will:</p> <ul style="list-style-type: none"> <li>(i) not affect any provisions of the Purchase Order Documents which are intended to continue after termination; and</li> <li>(ii) be without prejudice to any Claim arising out of any breach or non-performance by the Supplier of its obligations under a Purchase Order prior to termination.</li> </ul> <p>(d) Clauses 15 (Intellectual Property), 16 (Data Breach), 17 (Indemnity), 18 (Insurance), 19 (Disclosure of information), and 20 (Notices) survive the termination of a Purchase Order.</p>
<b>15. Intellectual property</b>	<p>The Supplier warrants that the Deliverables do not infringe any third party intellectual property rights (including patents, trademarks or copyright) in either Australia or internationally. The Supplier indemnifies the Company against any loss or damage (including solicitor's fees and other costs of defending an action) that may arise from a breach of this warranty. This indemnity continues notwithstanding the cancellation of any Purchase Order or termination of any or all of the Purchase Order Documents.</p> <p>The Company will own any intellectual property rights in any data, information or materials created, developed or produced in connection with provision of the Deliverables by the Supplier.</p>
<b>16. Data breach</b>	<p>If the Supplier becomes aware or suspects that it or one of its Personnel is using or disclosing, or has used or disclosed, Personal Information or there has been any loss of, or any unauthorised access to, or unauthorised disclosure of, any Data or Personal Information (<b>Data Breach</b>) then the Supplier must immediately notify the Company of that Data Breach.</p> <p>The Supplier must:</p> <ul style="list-style-type: none"> <li>(a) promptly disclose to the Company all information relevant to that actual or suspected Data Breach;</li> <li>(b) investigate whether a Data Breach has occurred; and</li> <li>(c) provide the Company with access to and copies of relevant records relating to the investigation.</li> </ul>
<b>17. Indemnity</b>	<ul style="list-style-type: none"> <li>(a) Subject to clause 17(b), the Supplier must indemnify the Company and Company Personnel (<b>Indemnified Parties</b>) against all Claims arising in connection with: <ul style="list-style-type: none"> <li>(i) any damage to the Company's site, the Deliverables or any property whether located on the Company's site or otherwise;</li> <li>(ii) death or injury to any person whether located on the Company's site or otherwise;</li> <li>(iii) a breach by the Supplier or Supplier's Personnel of any approval or law; and</li> <li>(iv) the breach by the Supplier of an obligation under the Purchase Order Documents or a warranty given by the Supplier, if the Claim arises in connection with any act, error or omission of the Supplier or Supplier's Personnel.</li> </ul> </li> <li>(b) If the Claims are caused in part by any act, error or omission of an Indemnified Party then the Supplier's liability to indemnify that Indemnified Party under this clause 17 will be reduced proportionally to the extent that the Claims are caused by the act, error or omission of that Indemnified Party.</li> <li>(c) The indemnity given by the Supplier under this clause 17: <ul style="list-style-type: none"> <li>(i) is a continuing obligation, separate and independent from the other obligations of the Supplier; and</li> <li>(ii) extends to include any Claims by Supplier's Personnel and third parties whether or not specifically stated in clauses 17(a) and (b).</li> </ul> </li> <li>(d) The Company will not be liable to the Supplier for any Consequential Loss arising directly or indirectly from or in connection with the Purchase Order Documents.</li> </ul>
<b>18. Insurances</b>	<p>The Supplier must, immediately upon request by the Company, provide the Company with copies of its certificate of currency for its product and public liability insurance, professional indemnity insurance (to the extent applicable), workers compensation and motor vehicle insurance (to the extent applicable).</p>
<b>19. Disclosure of information</b>	<p>A party must not, without the prior written consent of the other party disclose confidential information:</p> <ul style="list-style-type: none"> <li>(a) relating to the Deliverables or a party's business or operations; or</li> <li>(b) provided by one party to the other,</li> </ul> <p>or use such information for purposes unrelated to the Purchase Order Documents, unless disclosure is required by an applicable law or any government authority or by the listing rules of any applicable recognised stock exchange.</p>
<b>20. Notices</b>	<p>All notices must be in writing and addressed as set out in the Purchase Order Document (or as otherwise notified from time to time). Notices will be deemed to be received on the next Business Day if given outside of the hours of 9.00am to 5.00pm on a Business Day.</p> <p>A notice is treated as having been given:</p> <ul style="list-style-type: none"> <li>(a) if delivered by hand - on delivery to the relevant address;</li> <li>(b) if sent by post - on delivery to the relevant address, or three Business Days after it was posted, whichever is earlier; and</li> <li>(c) if transmitted by email - when the addressee receives it, with receipt evidenced by a report generated by the sender's email application confirming transmission.</li> </ul> <p>The Supplier must ensure that within 1 Business Day of its receipt or provision of any notice or documents issued under or in connection with the SOP Act, a copy of that notice or document is given to the Company. Nothing in this clause limits either party's rights and obligations under the SOP Act.</p>
<b>21. Anti-corruption</b>	<p>The Supplier represents that, in all of its activities in connection with the Purchase Order Documents and on behalf of the Company, it will comply fully with the <i>United States Foreign Corrupt Practices Act 1997</i> (15 U.S.C. §78-dd-1, et seq., as amended), the <i>United Kingdom Bribery Act 2010</i>, the <i>Criminal Code Act 1995 (Cth)</i> as well as all other anti-bribery laws, anti-corruption laws, conflict of interest laws, or other laws, rules or regulations of similar purpose and effect applicable to the Supplier, the Company and any anti-bribery, anti-corruption or conflict of interest policies of the Company notified to the Supplier from time to time (collectively, <b>Anti-Bribery Material</b>).</p>

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	<p>The Supplier represents that, in all of its activities in connection with the Purchase Order Documents and on behalf of the Company, the Supplier and its Personnel and Related Bodies Corporate have not:</p> <ul style="list-style-type: none"> <li>(a) taken and will not take any action in violation of the Anti-Bribery Material;</li> <li>(b) paid, offered, promised or authorised, and will not pay, offer, promise, or authorise the payment of money or anything of value, directly or indirectly, to any government official or any other person for the purpose of:             <ul style="list-style-type: none"> <li>(iii) influencing any act or decision of such person in his/her official capacity;</li> <li>(iv) inducing such person to act (including through action or omission) in violation of the lawful duty of such person;</li> <li>(v) securing any improper advantage; or</li> <li>(vi) inducing such person to use his/her influence to affect or influence any act or decision of a government body;</li> <li>(vii) in order to assist the Supplier or the Company in obtaining or retaining business for or with, or directing business to, any person; and</li> </ul> </li> <li>(c) accepted or received, and will not accept or receive, directly or indirectly, any payment, item, or benefit, regardless of value, as an improper inducement to award, obtain or retain business or otherwise gain or grant an improper business advantage from or to any other person.</li> </ul> <p>The Supplier agrees not to have any contact with any authority or government official in relation to the supply of Deliverables under the Purchaser Order Documents without the prior written approval of the Company.</p> <p>If the Company determines or has good reason to suspect that the Supplier, its Personnel or Related Bodies Corporate are engaging, or have engaged, in conduct that violates or will place the Company at risk of liability under the Anti-Bribery Material, including by breaching any of the representations set out in this clause, the Company may immediately terminate any or all Purchase Orders by notice to the Supplier.</p>
<p><b>22. Human Rights</b></p>	<p>The Supplier must, and must ensure that its Personnel, contractors, agents, suppliers and Related Bodies Corporate in connection with the Purchase Order Documents:</p> <ul style="list-style-type: none"> <li>(a) comply with all Human Rights Laws;</li> <li>(b) comply with the Company's policies in respect of human rights, including the Supplier Code;</li> <li>(c) take prompt corrective actions in respect of any failure to comply with such Human Rights Laws; and</li> <li>(d) cooperate fully with the Company in any investigation of such failure carried out by or on behalf of the Company, including by providing the Company with access to relevant documents and persons and by providing the Company with a copy of any incident investigation reports carried out by or on behalf of the Supplier or that are otherwise in the possession or control of the Supplier or any of its Related Bodies Corporate.</li> </ul>
<p><b>23. General</b></p>	<p>No waiver of any breach of, or failure to enforce any provision of, the Purchase Order Documents in any way limits the rights of a party to enforce compliance with the provisions of the Purchase Order Documents in the future.</p> <p>If any term of the Purchase Order Documents is, or becomes, unenforceable, illegal or invalid for any reason, the relevant term is to be taken to have been modified to the extent necessary to remedy the unenforceability, illegality or invalidity (or, if that is not possible, it is taken to have been severed from the relevant Purchase Order Document).</p> <p>The Purchase Order Documents are governed by and construed in accordance with the laws of the place of delivery and the parties submit to the non-exclusive jurisdiction of the courts in that place.</p> <p>These Terms and Conditions may only be varied in writing and agreed to by both parties.</p> <p>The words 'include' and 'including' are to be construed without limitation.</p> <p>If there is more than one entity comprising the Supplier, reference to the Supplier in the Purchaser Order Documents is a reference to all of the entities comprising the Supplier both jointly and severally.</p>
<p><b>24. Definitions</b></p>	<p><b>"Business Day"</b> means a day on which banks are open for general business in the place of delivery excluding Saturdays, Sundays, or public holidays.</p> <p><b>"Claim"</b> means any claim, action, demand, loss, damage (including damage to property, plant or equipment), judgments, court orders, costs (including, without limitation, legal fees and disbursements on a full indemnity basis), liabilities or expense of any kind or character suffered or incurred.</p> <p><b>"Company"</b> means the entity described as the Company in the Purchase Order or any of its Related Bodies Corporate who issue a Purchase Order to the Supplier.</p> <p><b>"Consequential Loss"</b> includes loss of revenue, profits, time, goodwill, data, anticipated savings, opportunity, business reputation, future reputation, production or profit and any indirect, economic, special or consequential loss or damage.</p> <p><b>"Supplier"</b> means the person, firm or corporation from whom the Deliverables are being purchased pursuant to a Purchase Order.</p> <p><b>"Data"</b> means data, information and other materials collected by or disclosed to the Supplier for or on behalf of the Company including without limitation data in relation to the provision of the Deliverables.</p> <p><b>"Deliverables"</b> mean all products and/or services to be supplied by the Supplier to the Company as specified in a Purchase Order.</p> <p><b>"GST Legislation"</b> means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any subsequent Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.</p> <p><b>"Human Rights Laws"</b> means any law which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services (or similar) or any other human rights, and is applicable in the jurisdiction in which the Company and the Supplier are registered or conduct business or in which activities relevant to the Deliverables are to be performed.</p> <p><b>"Personal Information"</b> means any information or an opinion, whether true or otherwise or in a material form, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion:</p> <ul style="list-style-type: none"> <li>(a) whether the information or opinion is true or not; and</li> <li>(b) whether the information or opinion is recorded in a material form or not.</li> </ul> <p><b>"Personnel"</b> means any natural person who is an employee, officer, agent or professional advisor of a party and in the case of the Supplier, its subcontractors and employees, officers, agents and professional advisors of those subcontractors.</p>

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"**Price**" means the price or rates specified as such in the Purchase Order.

"**Proportionate Liability Acts**" means, where the services are performed in New South Wales the *Civil Liability Act 2002* (NSW), where the services are performed in Victoria the *Wrongs Act 1958* (VIC), and where the services are performed in Queensland the *Civil Liability Act 2003* (QLD).

"**Purchase Order**" means any electronic order by the Company to purchase Deliverables from the Supplier.

"**Purchase Order Documents**" means the documents set out in clause 1 of these Terms and Conditions, and all documents attached, or incorporated by reference, to those documents.

"**Related Body Corporate**" has the same meaning as in the *Corporations Act 2001* (Cth).

"**SOP Act**" means, where the services are located in New South Wales the *Building and Construction Industry Security of Payment Act 1999* (NSW), where the services are located in Victoria the *Building and Construction Industry Security of Payment Act 2002* (VIC), and where the services are located in Queensland the *Building and Construction Industry Payments Act 2004* (QLD) or Chapter 3 of the *Building Industry Fairness (Security of Payment) Act 2017* (QLD) (**BIF Act**), once that chapter of the BIF Act is proclaimed.

"**Supplier Code**" means the supplier code found on the Company's website at <https://www.wilmarsugar-anz.com/>.