

General Terms and Conditions for the Purchase of Goods (Version of January 2020)

1. **Scope.** Unless otherwise agreed in writing, these General Terms and Conditions for the Purchase of Goods (the “**Conditions**”) apply exclusively to every Contract (as defined below) to the exclusion of any other terms that the person or entity (the “**Contractor**”) from whom we purchase the goods or services (the “**Goods**”) seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Unless expressly approved by us in writing, any additional or conflicting terms and conditions contained in, attached to or referred to in the Contractor’s documentation or other prior or later communication from the Contractor to us shall have no effect on the purchase of the Goods and are expressly rejected by us. “**Contract**” as used herein shall mean any agreement for the purchase of Goods made by us or on our behalf.
2. **Quote; Conclusion of a Contract.**
 - 2.1 Any quote for Goods given by the Contractor shall be free of charge and we shall only be obliged to pay for the same if we have agreed to do so in writing.
 - 2.2 An order (whether set out in our purchase order form or in our written acceptance of the Contractor’s quotation or a similar document) (the “**Order**”) constitutes an offer from us to purchase the Goods in accordance with these Conditions. Such Order shall be deemed to be accepted on the earlier of (a) the signing of a written Contract between the parties to which these Conditions are attached, (b) the Contractor issuing an acceptance of the Order; and (c) the Contractor doing any act consistent with fulfilling the Order, at which point a Contract between the Contractor and us for the sale and purchase of the Goods in accordance with these Conditions shall come into existence.
3. **Warranty.**
 - 3.1 The Contractor warrants that the Goods shall: (a) correspond with their description and any applicable specification that is agreed between the Contractor and us; (b) be of satisfactory quality and fit for any purpose held out by the Contractor or made known to the Contractor by us expressly or by implication, and in this respect we rely on the Contractor’s skill and judgment; (c) be delivered with good and marketable title and free from liens or encumbrances, and (d) be free from defects in design, material and workmanship and remain so for at least 24 months after delivery (the “**Warranty Period**”). This Warranty Period shall also apply to any reworked, repaired or replaced Goods; and (e) comply with all applicable statutory and regulatory requirements relating to safety standards, the manufacture, labelling, registration, packaging, storage, handling and delivery of the Goods. In respect of services, the Contractor warrants that they shall be performed: (a) in accordance with best practice in the Contractor’s industry, profession or trade; (b) using only employees, agents, subcontractors including individuals that the Contractor, its subcontractors, vendors, carriers or other agents engage in relation with the performance of the Contractor’s obligations (hereafter collectively the “**Contractor Personnel**”) who are suitably skilled and experienced to perform the tasks assigned to them; and (c) using the best quality goods, materials, standards and techniques. The Contractor shall ensure that at all times it has and maintains all the licences, authorisations, consents and permits required to carry out its obligations under the Contract.
 - 3.2 Where applicable, the Contractor warrants that it has all the necessary authorisations, permissions and licences for the shipment of hazardous material (as defined by applicable laws).
 - 3.3 We will inspect the Goods only for the purpose of identifying obvious external damage or obvious deviations in terms of specifications and quantity. If we consider that the Goods do not conform or are unlikely to comply with the Contractor’s undertakings in Section 3.1, we shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.
 - 3.4 The Contractor’s obligations and liabilities under this Contract shall apply notwithstanding: (a) any review or clearance provided by us; (b) the provision of items or information by us; (c) any assistance provided by us to the Contractor Personnel; (d) payment for the Goods; and (e) any right we are entitled to exercise under this Contract including a right to inspect and audit.
 - 3.5 The Contractor shall at our request and costs do or procure all such acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary in our opinion to give full effect to the Contract and to vest in us the full benefit of the assets, rights and benefits to be transferred to us under the Contract.
4. **Intellectual Property Rights.** Any and all intellectual property rights anywhere in the world (including without limitation domain names, patents, design rights, utility rights, copyrights and moral rights, including rights in computer software and databases, rights in source codes, trademarks, trade names, logos, trade secrets, know-how, data, conclusions, technical and/or commercial findings, rights of use and any application or the right to make application for any of the above) existing now or at any time in the future and whether registered or registrable or not (the “**Intellectual Property Rights**”) in (a) the Goods, materials and other tangible property to be produced for, or supplied to us by the Contractor and (b) all work created by the Contractor or Contractor Personnel in the course of performing the services under the Contract including, but not limited to, documents, drawings, designs, samples, test results, analysis, studies, reports, work product, plans, specifications, or software ((a) and (b) collectively referred to as the “**Work**”) shall vest in us immediately upon creation to the fullest extent permitted by applicable law. The Contractor hereby grants, assigns and transfers to us all Intellectual Property Rights, title and interest in all Work and shall do (or procure to be done) all such further acts and things and the execution of all such documents as may be required for the purpose of securing for us the full benefit of such Intellectual Property Rights, title and interest. Insofar as such an assignment and transfer is not, wholly or in part, possible due to applicable law, the Contractor hereby grants to us and our worldwide related companies pursuant to section 2(3) of the Companies Act 1993 (New Zealand) (the “**Affiliates**”) an exclusive, royalty-free, worldwide, perpetual right and license to use, sub-license, reproduce, amend, sell, offer for sale, import or export the Work. Where the Work will incorporate Intellectual Property Rights owned by the Contractor prior to the conclusion of the Contract (the “**Background IPR**”), the Contractor shall advise us of this in writing prior to the conclusion of the Contract and obtain our approval before proceeding. The Contractor hereby grants a non-exclusive, royalty-free, worldwide, perpetual right and license to use (as a whole or in parts) such Background IPR and to sublicense to our Affiliates, reproduce, amend, sell, offer for sale, import or export any Work, which incorporates or is based on such Background IPR.
5. **Transportation of the Goods, Certificates and Correspondence.**
 - 5.1 The Contractor shall ensure that the transportation of the Goods complies with all applicable laws and regulations (including those in respect of tariff, transportation and packaging) and that each correspondence, bill of lading, packing sheet, package or container (as applicable) shall clearly indicate our Order number, the date of the Order, delivery address, the applicable material name and/or material number specified by us and such other information as required by us.
 - 5.2 The unit load weight (from 1 ton onwards) shall be affixed to the Goods in a visible and indelible manner.
 - 5.3 In the event that any certificate or any other documentation is required or agreed between us to be provided for the acceptance of the Goods, such documentation shall be provided by the Contractor free of charge.

6. Delivery and Delay; Product Information; Title in the Goods; Activities at our Jobsite.

- 6.1 Unless agreed otherwise by us in writing, the Contractor shall deliver the Goods DDP (INCOTERMS® 2020) to the location set out in the Order or to such location as instructed by us prior to delivery. Notwithstanding the agreed INCOTERMS®, "Delivery" of the Goods shall be completed upon the completion of unloading of the Goods at the final delivery location or our acceptance of the performance, as applicable.
- 6.2 The Contractor shall, prior to delivery and in a timely manner, provide us with all necessary product information especially those with respect to product composition and shelf life/service life including but not limited to safety data sheets, processing advice, labelling regulations, assembly instructions, workers' protection measures as well as any amendments of the foregoing.
- 6.3 Deliveries shall be made in the quantities and at the dates and times specified in the Order. Time is of the essence in this regard. Without prejudice to any other rights or remedies we may have for late delivery or performance, the Contractor shall inform us without undue delay and in writing in the event it appears that it may not be able to perform its obligations within the agreed time period.
- 6.4 In the event of a discrepancy in weight or volume, the weight or volume established by us upon Delivery shall prevail unless proven to be in error.
- 6.5 Title and risk in the Goods shall pass to us upon Delivery.
- 6.6 In the event that performance by the Contractor is subject to documents or information to be provided by us, the Contractor may claim in its defence of its late performance that documents or information required from us have not been provided only if it has not received such documents or information within a reasonable period despite having sent us a reminder.
- 6.7 All information including drawings and other materials which we require for using, assembling, operating, servicing or repairing the Goods shall be provided to us by the Contractor in good time but latest upon Delivery without any charge and without us having to request the same.
- 6.8 The Contractor shall not Deliver the Goods in instalments or provide partial performance without our prior written consent. Where it is so agreed, failure by the Contractor to deliver any one instalment or provide partial performance on time or at all or any defect in an instalment or partial performance, shall entitle us to the remedies set out in Section 11.
- 6.9 If, in the fulfilment of the Contractor's obligations under the Contract, the Contractor and/or Contractor Personnel are required to perform (a) services, or (b) any activities on the Jobsite (as defined below) ((a) and (b) collectively "**Activities**"), the Contractor shall take all necessary precautions to prevent the occurrence of any accidents, injury or damage to any person or property during such Activities.
- 6.10 In addition and to the fullest extent permitted by law, the Contractor shall, during the execution of all Activities, ensure that it and all Contractor Personnel comply with: (a) all applicable laws and regulations including but not limited to those relating to environmental protection, health and safety, accident and fire prevention, transport, waste disposal and management and industrial safety; (b) our safety policies, rules and regulations in force at the premises or industrial area where Activities are to be performed (the "**Jobsite**"); (c) all applicable laws related to the handling of hazardous materials and, if and to the extent the Contractor handles hazardous materials pursuant to any Contract, the Contractor shall maintain an effective management system in relation to environmental protection and the handling of such hazardous materials. If we notify the Contractor of a breach of (a), (b) or (c) above by any Contractor Personnel, the Contractor shall at our request take all necessary measures including forbidding the Contractor Personnel guilty of such breaches from entering the Jobsite.
- 6.11 To the extent that its performance of the Contract generates waste, whether at the Jobsite or otherwise, the Contractor shall recycle or remove such waste at its expense.

7. **Quality Assurance.** The Contractor shall maintain an internationally-recognised quality assurance system (e.g. as published by the International Organisation for Standardisation). We reserve the right to audit the Contractor's quality assurance system and the Contractor shall provide us with all reasonable assistance and access.

8. Invoices and Payment.

- 8.1 At the end of each month (unless otherwise provided in the Order or agreed by the parties in writing) during which Goods are delivered and/or services are performed, the Contractor shall submit to the address stated in our Order an invoice in a form satisfactory to us, which meets all applicable tax laws and which sets out separately the value added tax, the Order number and each item of Goods delivered and/or services performed.
- 8.2 We shall pay the undisputed amounts within 90 days of the later of (a) receipt of the correctly rendered invoice, and (b) Delivery of the Goods or acceptance of performance by us. Notwithstanding the foregoing, any payment otherwise due on a Saturday, Sunday or public holiday (as applicable to the Delivery location) shall be due on the following business day. Payment shall be considered to be made when payment by electronic funds transfer is initiated by us.
- 8.3 Without prejudice to any other rights or remedies we may have, we shall be entitled to set off at our sole discretion any and all receivables payable to us from the Contractor against any sum owed by us or our Affiliates to the Contractor. Such receivables payable to us from the Contractor shall inure to the benefit of our Affiliates as joint and several creditors. The same shall apply to rights of retention and other defences and exceptions.

9. **Subcontractors.** The Contractor shall not subcontract any of its obligations under the Contract without our prior written consent. The Contractor shall subject the approved subcontractors to the same obligations as those owed to us under the Contract and ensure compliance with such obligations by its subcontractors. It shall be liable for all acts and omissions of the subcontractors.

10. Compliance.

- 10.1 We refer to the documents titled "Code of Conduct", "Global Social Policy," and "ESHQ Values" which apply exclusively to us and our Affiliates and which are available at <http://www.evonik.com/responsibility>. We further refer to the "Code of Conduct for Suppliers" which sets out corresponding standards for our suppliers and which is also available at <http://www.evonik.com/responsibility>. We expect the Contractor to observe the internationally recognized minimum standards of the UN Global Compact and the international labour standards of the International Labour Organization (ILO)
- 10.2 The Contractor shall also comply with all anti-corruption laws that are applicable to the contractual relationship between us. Without prejudice to any other rights or remedies that may be available to us, any breach of the first sentence of this Section 10.2 in connection with the Contract is deemed to be a breach of contract which shall entitle us to terminate the Contract immediately for cause.

11. Remedies and Indemnification.

- 11.1 If the Goods are not delivered or performed on or by the date they are due, do not comply with the undertakings set out in these Conditions or are defective in any other way, or if our evaluation of the Contractor's performance suggests that the Contractor will not or will not be able to deliver the Goods on or by the date they are due, then, without limiting any of our other rights or remedies, we shall have the right to any one or more of the following remedies, whether or not we have accepted the Goods:
- (a) to terminate the Contract;
 - (b) to reject the Goods (in whole or in part) and return them to the Contractor at the Contractor's own risk and expense;
 - (c) to require the Contractor, at its own expense, to rework, repair or replace the rejected Goods;
 - (d) to require the Contractor to provide a full refund of the rejected Goods, if payment has already been made;
 - (e) to recover from the Contractor any costs incurred by us in obtaining substitute Goods from a third party or having the defect remedied (whether by ourselves or a third party); and

- (f) to claim damages for any other costs, loss or expenses incurred by us which are directly or indirectly attributable to the Contractor's failure to carry out its obligations under the Contract.
- 11.2 The Contractor shall fully indemnify, defend and hold harmless us, our Affiliates and the respective directors, officers and employees of any of the foregoing entities (collectively the "**Indemnified Parties**") from and against all claims, demands, liabilities, costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties and legal and other professional fees and expenses, awarded against, incurred and/or paid by the Indemnified Parties as a result or in connection with:
- (a) any claim for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods;
 - (b) any claim arising out of or in connection with the supply or use of the Goods, to the extent that such claim arises out of the breach, negligent performance, failure or delay in performance of the Contract by the Contractor or Contractor Personnel; and
 - (c) any claim for death, personal injury or damage to property arising out of or in connection with defects in the Goods and/or during the Activities, to the extent attributable to the acts or omissions of the Contractor or Contractor Personnel.
12. **Our Liability.** Regardless of the cause of action, we and the Indemnified Parties shall only be liable for any loss or damage incurred by the Contractor in connection with the Contract to the extent that the same is caused by any act or failure to act (whether sole, joint, or concurrent) on our part or on the part of any Indemnified Party that seriously and substantially deviates from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct or that is in reckless disregard of or indifference to harmful consequences which such person knows, or should have known, such act or failure to act would have. We and the Indemnified Parties shall under no circumstances whatsoever be liable for any loss of profit, loss of revenue, loss of use or any indirect or consequential loss arising under or in connection with the Contract, regardless of the cause, including breach of contract, tort (including negligence), strict liability or otherwise by or of any of the Indemnified Parties. Nothing herein or in the Contract shall limit either party's liability for: (a) death or injury caused by negligence or the negligence of a party's directors, officers or employees; (b) fraud or fraudulent misrepresentation; or (iii) any matter in respect of which it would be unlawful to exclude or restrict liability.
13. **Insurance.** During the term of the Contract and the Warranty Period, the Contractor shall procure and maintain in force with a reputable insurance company professional liability insurance, product liability insurance and public liability insurance on terms customary to the industry but in any event with a minimum coverage of NZD5 million per occurrence (or such other amount as agreed in writing) to cover such heads of liability as may arise under or in connection with the Contract. The Contractor shall provide documentation of its insurance coverage upon our request.
14. **Confidentiality.** The Contractor shall keep strictly confidential any information, knowledge and tangible materials including but not limited to technical and other data, measured values, techniques, business experience, business secrets, know-how, drawings and other documentation (the "**Confidential Information**") received from or disclosed by, whether directly or indirectly, any of the Indemnified Parties or on its behalf. The Contractor shall not disclose Confidential Information to third parties and shall use it only for the purpose of performing its obligations under the Contract. The Contractor shall disclose Confidential Information to Contractor Personnel only to the extent required for the performance of the Contract and provided that prior to the disclosure of any Confidential Information to such Contractor Personnel, the relevant Contractor Personnel is made aware of the confidentiality of such information and agrees to be bound by confidentiality and restricted use obligations substantially in accordance with these Conditions. The Contractor shall return all Confidential Information delivered to it in a tangible form such as documents, samples, specimens or the like promptly upon our request without retaining any copies or notes. In addition, it shall, upon our request, delete its own notes, compilations and evaluations containing Confidential Information without undue delay and shall confirm this to us in writing. We and our Affiliates retain ownership, as well as all Intellectual Property Rights, in the Confidential Information. The confidentiality and restricted use obligations set out herein shall survive the expiry or termination of the Contract for ten (10) years.
15. **Termination.**
- 15.1 We may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Contractor written notice, whereupon the Contractor shall discontinue all work on the Contract.
- 15.2 We may terminate the Contract with immediate effect if the Contractor becomes subject to any of the following events: (a) it becomes unable, or is deemed unable, to pay its debts as they fall due; (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up; (c) an assignment or any general arrangement is made for the benefit of creditors; (d) it is the subject of a bankruptcy petition or order; (e) it becomes bankrupt or insolvent (however evidenced); (f) it has a liquidator, administrator, custodian, receiver or similar official appointed with respect to it or any substantial portion of its property or assets; (g) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or (h) its financial position deteriorates to such an extent that in our reasonable opinion its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3 In the event that we terminate the Contract, we shall pay the Contractor fair and reasonable compensation for work-in-progress at the time of termination. Such compensation shall be the Contractor's sole remedy and the Contractor hereby waives any claim for lost profits, consequential and/or indirect losses of any kind or nature whatsoever, regardless of the cause, including breach of contract, tort (including negligence), strict liability or otherwise by or of the Indemnified Parties.
- 15.4 Sections 3, 4, 5.3, 6.11, 8.3, 11, 12, 13, 14, 16.5 to 16.8 and any other provisions of these Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15.5 Any Work shall become and remain our property upon its creation, regardless of the Contractor's characterisation of such Work, and the Contractor shall furnish such Work to us at the earlier of (a) termination of the Contract or (b) our request.
16. **Miscellaneous.**
- 16.1 **Advertising Materials.** The Contractor may refer to the business relationship existing between us in its promotional and advertising materials only with our express prior written consent.
- 16.2 **No Assignment.** The Contractor may not assign, transfer, charge or deal in any other manner with any or all of its rights or obligations under the Contract without our prior written consent.
- 16.3 **Amendments.** No amendment, modification or supplement of these Conditions including this Section 16.3 shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.4 **Severance.** If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected. If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 16.5 **Third Party Rights.** Except as expressly provided herein with regards to the Affiliates and the Indemnified Parties, a person who is not a party to it shall not have any rights under the Contract and Commercial Law Act 2017 to enforce any term hereof or of the Contract. The rights of the parties to terminate, rescind or agree any variation under the Contract are not subject to the consent of any other person.
- 16.6 **Rights and remedies.** Our rights and remedies under these Conditions are in addition to our rights and remedies implied by statute, common law, equity or otherwise.
- 16.7 **Applicable Law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by the laws of New Zealand. The application of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (and any legislation adopting such Convention, including the Contract and Commercial Law Act 2017) is excluded.
- 16.8 **Jurisdiction.** The parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.