

Consultancy Services Terms and Conditions

Wesfarmers Chemicals, Energy & Fertilisers Limited (“**WesCEF**”) requires that the supplier or consultant (“**the Consultant**”) specified in a WesCEF purchase order or work request (“**the Order**”) supply WesCEF with the services (“**the Services**”) specified in the Order and the Consultant has agreed to provide the Services on the following terms and conditions:

1. ISSUE AND ACCEPTANCE OF ORDER

1.1 The Order is WesCEF’s offer to the Consultant for the Consultant to supply the Services described in the Order to WesCEF on the terms and conditions contained herein. Acceptance of the Order by the Consultant shall constitute a binding contract between WesCEF and the Consultant to supply the Services specified in the Order on the terms and conditions contained herein.

1.2 The following documents shall apply to, and be deemed to be incorporated in, a contract formed by acceptance of the Order (“**the Contract**”):

- (a) the Order;
- (b) these Consultancy Services Terms and Conditions; and
- (c) all documents attached to the Order or incorporated in the Order by reference.

1.3 The Consultant shall not provide the Services to WesCEF without obtaining an Order from WesCEF.

1.4 The Consultant must ensure that the Order number is clearly marked on all invoices and other documents and correspondence relating to the supply of the Services.

1.5 If the Consultant is unwilling or unable to accept the offer made by WesCEF in the Order under the terms and conditions specified herein, the Consultant shall immediately contact WesCEF and advise in writing of any variations it requires to be made for the acceptance or rejection in writing by WesCEF.

1.6 If the Consultant proceeds with the supply of the Services without first requesting or receiving WesCEF’s written acceptance of variations proposed by the Consultant, then the Consultant is deemed to have accepted the terms and conditions contained herein and the terms of the Order.

1.7 Except as provided in Clause 13, no addition to or modification of the Contract will bind either of the parties unless it is made in writing and signed by both of them.

1.8 If a written contract exists between WesCEF and the Consultant for the supply of the Services, the terms and conditions of the written contract shall take precedence over these Consultancy Services Terms and Conditions to the extent of any inconsistency.

2. ENGAGEMENT AND TERM

2.1 WesCEF engages the Consultant to perform the Services and such other related matters or ancillary work as the Consultant may from time to time be requested to provide to WesCEF, to the best of its ability.

2.2 The Consultant will commence the Services on the commencement date nominated on the Order (“**Commencement Date**”) and, subject to receiving a written waiver by WesCEF, will complete the Services on or before the completion date nominated on the order (“**Completion Date**”).

3. CONSULTANT’S OBLIGATIONS

3.1 The Consultant warrants that it and its employees, contractors or agents (“**Personnel**”) are skilled, trained, qualified and competent to perform the Services and that they will perform the Services in a competent, skilled and efficient manner.

3.2 The Consultant will:

- (a) comply with Services priorities determined by WesCEF; and
- (b) complete all Services commenced by the Consultant, unless the WesCEF expressly authorises temporary suspension of such Services under Clause 9.

3.3 The Consultant shall, at its cost, comply with the provisions of all laws (federal, state or municipal) and to all lawful requirements and regulations of WesCEF in any way affecting, or applicable to the performance of the Services.

3.4 Without limiting the generality of Clause 3.3, the Consultant shall:

- (a) complete the Services in accordance with all operations, safety, health and environment policies, guidelines, rules and procedures pertaining to the site or premises at which the Services are to be

performed, and which have been notified to the Consultant by WesCEF;

(b) ensure that its Personnel agree also to be so bound by the provisions of Clause 3.4(a);

(c) obtain all applicable permits and licences and give all notices required to be given and shall pay all fees, deposits and taxes in connection with the Services;

(d) comply with all applicable environmental laws and will adopt methods of performing the Services that will reduce to the greatest extent practicable disruption to the environment caused by or during the Services and ensure that the place where it performs the Services is left in a clean and tidy state to the satisfaction of the WesCEF; and

(e) establish and maintain a quality assurance program and quality control procedures to adequately ensure that the quality of the Services provided is delivered and maintained at a consistently high standard.

3.5 WesCEF relies on the Consultant’s skill and judgment. The Consultant undertakes to advise WesCEF whenever the Consultant believes that compliance with a requirement of WesCEF would render the Services unsuitable for WesCEF’s requirements.

4. PERSONNEL

The Consultant may engage in the performance of the Services, such employees, contractors or agents as may first be approved in writing by WesCEF, and will remove and replace at the request of WesCEF any such employees, contractors or agents who fail to perform work satisfactorily, misbehave or are absent from the site or fail to comply with instructions of WesCEF.

5. INDEPENDENT CONTRACTOR

5.1 The Consultant is engaged as an independent contractor and nothing in this Contract will be deemed to constitute the Consultant as an agent or employee of WesCEF and the Consultant will have no authority to incur and will not incur any obligation on the part of WesCEF, except with the written approval of WesCEF.

5.2 WesCEF and the Consultant agree that the Consultant shall be liable to pay all wages, superannuation, taxes, and any other payments or contributions required by law to be made in respect of any Personnel, and shall make all appropriate taxation deductions required to be made.

6. PAYMENT

6.1 In consideration of the Consultant providing the Services, WesCEF will pay the fees specified on the Order for the Services. The Consultant may only invoice WesCEF upon completion of the Services.

6.2 The Consultant must furnish WesCEF with an invoice upon completion of the Services specifying WesCEF’s Order number, setting out the amount the Consultant asserts is payable by WesCEF, and the basis for its calculation.

6.3 The Consultant’s invoice must be sent to WesCEF at the address referred to in the Order or as otherwise directed by WesCEF.

6.4 WesCEF shall pay the Consultant’s invoices by Electronic Funds Transfer within thirty (30) days of the end of the calendar month in which the invoice is received by WesCEF.

6.5 If WesCEF disputes any amount claimed in an invoice, WesCEF shall give written notification to the Consultant stating the reasons for the dispute within 30 days after receipt of the disputed invoice. WesCEF may withhold disputed amounts until the dispute has been settled.

6.6 In addition, WesCEF may withhold payment of the amount charged for Services performed, or any instalment of that amount, if the Consultant’s performance of the Services is unsatisfactory, or if the Consultant is in breach of the Contract.

6.7 WesCEF is entitled to set off against monies otherwise due to the Consultant any monies that may be due or owing by the Consultant to WesCEF.

7. MATERIALS, TOOLS AND PERSONNEL

- 7.1 Subject to Clause 7.2, the Consultant will supply all materials, tools, equipment and personnel required to perform the Services. The Consultant warrants that all materials used to perform the Services will be new and of the best quality and workmanship of their respective kinds and that all tools and equipment used to perform the Services will be in good working order.
- 7.2 If WesCEF is to provide any materials or tools necessary for the performance of the Services, the Consultant will satisfy itself that the materials or tools provided by WesCEF are suitable for the performance of the Services, and will immediately notify WesCEF if the Consultant believes that any materials or tools supplied are defective or unsuitable for the performance of the Services.
- 7.3 On the completion of the Services or upon the termination of this Contract the Consultant will return to WesCEF any materials, tools or other property supplied by WesCEF to the Consultant in the same condition that it was supplied save allowance for fair wear and tear.

8. TERMINATION

- 8.1 If the Consultant breaches any term of this Contract, then WesCEF may give notice to the Consultant in breach requiring it to remedy the breach within 7 days, and if the breach is not so remedied WesCEF may terminate the Contract immediately by notice in writing.
- 8.2 WesCEF may terminate the Contract by immediate notice in writing to the Consultant where an order is made for winding up the Consultant, a receiver, or receiver and manager of any property of the Consultant is appointed, a provisional liquidator, or official manager of the Consultant is appointed, the Consultant is deemed by law to be unable to pay its debts, or the Consultant makes any arrangement or compromise with its creditors, or members, or with any class of its creditors, or members.
- 8.3 Subject to Clauses 9.1 and 9.2, WesCEF may terminate the Contract at any time by giving the Consultant 14 days notice in writing, or such shorter period of notice as may be agreed.

9. SUSPENSION OF SERVICES

- 9.1 The Consultant will suspend the whole or any portion of the Services on receipt of notice from WesCEF to do so. Following receipt of the notice the Consultant will do all things possible to reduce any expense or cost consequent upon the suspension including, without limitation, rescheduling the Services.
- 9.2 The suspension will not invalidate this Contract.
- 9.3 WesCEF will, when the reason for any suspension no longer exists, direct the Consultant to recommence the Services or the relevant part of the Services and the Consultant will comply with the direction promptly.
- 9.4 WesCEF will not be responsible for any costs or expenses incurred by the Consultant in respect of any suspension of the Services unless WesCEF is solely responsible for the cause of the delay leading to the suspension and in no event will WesCEF be liable to compensate the Consultant for loss of actual or anticipated profits or any consequential, special, contingent or penal damages whatsoever.

10. PROPRIETARY INFORMATION

All patterns, drawings and materials supplied by WesCEF will remain its property and must be returned in good order and condition on completion of the Services and the Consultant agrees to replace free of charge any patterns, drawings or materials (the property of WesCEF) which may be lost, damaged or destroyed whilst in charge of the Consultant.

11. CONFIDENTIALITY

- 11.1 All drawings, specifications and information relating to the Services, WesCEF's site, WesCEF's operations or affairs or the operations or affairs of a related corporation of WesCEF or the rates of wages and conditions for workmen and employees whether the same be oral printed or graphic obtained by the Consultant from WesCEF or created by the Consultant when performing the Services are confidential to WesCEF and shall not be used by the Consultant other than for the purpose of performing the Services.
- 11.2 The Consultant shall not copy or reproduce any information except when and then to the extent reasonably necessary for the purpose of performing the Services.
- 11.3 The Consultant will return or cause the return of all documents and other materials in its possession or under its control which contain, relate to, or concern any confidential information (including any material created by the Consultant or any Personnel):
- immediately on WesCEF's demand;
 - without demand as soon as such documents and other materials, or any of them, are no longer required by the Consultant for the performance of the Services; or

(c) on the termination of the Contract.

- 11.4 The Consultant shall not for any purpose whatsoever take any photographs or make any sketches of the Services performed by it on WesCEF's or any third party's premises, property or operations without the prior written consent of WesCEF and any photograph or sketch obtained in contravention of this subclause shall be liable to confiscation and destruction by WesCEF.
- 11.5 The Consultant shall procure that any of its Personnel or any other person to whom it supplied information as permitted by this Clause 11 be bound by terms no less onerous than those contained in this Clause 11. In addition, when required by WesCEF, the Consultant shall ensure that the nominated Personnel execute a confidentiality undertaking in the form nominated by WesCEF.
- 11.6 The Consultant indemnifies WesCEF from all damages, losses, expenses, claims or actions arising out of a breach by the Consultant of any obligation under this Clause 11 or a breach by any other person of any obligation imposed on that person by the Consultant pursuant to this Clause 11.
- 11.7 The provisions of this Contract relating to secrecy or confidentiality of information will survive any completion of the Contract or any other termination of the Contract, in accordance with the respective terms and conditions of the Contract for a period of FIVE (5) years.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All:
- works, items, materials, documents and information in whatever form ("Works") produced or developed by the Consultant or under the direction of the Consultant under the Contract in relation to the Services; and
 - intellectual property rights (including without limitation any patent (including business method patent), copyright (including any moral rights), design, confidential information, know how, trade secret, circuit layout rights, invention or trade mark) ("Intellectual Property Rights") in all such Works,
- shall vest in and become the sole and complete property of WesCEF upon their creation.
- 12.2 To the extent that any Works (including all Intellectual Property Rights in those Works) referred to in Clause 12.1 have not vested in and become the sole and complete property of WesCEF for any reason, the Consultant hereby unconditionally and irrevocably assigns those Works (including all Intellectual Property Rights in those Works) without charge to WesCEF. The Consultant must upon the request of WesCEF, do all things necessary (including without limitation the execution of any document) to ensure that WesCEF obtains the full benefit of the assignment.
- 12.3 The Consultant shall not use any of the Works referred to in this Clause 12 otherwise than for the purpose of performing the Services, without the prior written consent or licence of WesCEF.
- 12.4 The Consultant represents and warrants to WesCEF that it will not infringe the Intellectual Property Rights of any third party or otherwise breach any law or obligation to any third party in the performance of its obligations pursuant to this Contract in completing the Services.

12.5 The Consultant will indemnify WesCEF against:

- all claims which may be brought or made against WesCEF by any person in respect of any infringement of Intellectual Property Rights by the Consultant, its employees, agents or contractors in the course of, or incidental to, performing the Services; and
- any reasonable costs or expenses that may be incurred by WesCEF in connection with any such claim.

13. VARIATIONS

- 13.1 WesCEF may make any revision of the form, quality or quantity of the Services, or any part of it, that may in its opinion be necessary or desirable, and the Consultant will do any of the following:-
- execute additional Services of any kind necessary for the completion of the Services;
 - increase or decrease the quantity of any Services;
 - omit any Services;
 - change the character or quality or kind of any such Services, provided that such variation will not have the effect of fundamentally changing or altering the nature or character of the Services.
- 13.2 Unless otherwise agreed all variations will be valued by applying the rates applicable to the Order.

13.3 The Consultant will not vary the form, quality or quantity of the Services, or any part of them, except in accordance with a written direction given by WesCEF under Clause 13.1.

13.4 All variations will be incorporated into this Contract in writing and no variation will in any way vitiate or invalidate this Contract, but the value (if any) of all variations will be taken into account in ascertaining any variation to the remuneration compensation payable to the Consultant.

14. INDEMNITY

14.1 The Consultant shall indemnify and keep indemnified WesCEF from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by WesCEF and arising directly or indirectly out of or in connection with:

- (a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods and/or Services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
- (b) the failure of the Services to conform to or fulfil any term or condition of the Contract; or
- (c) the Consultant's performance or non-performance (including the performance or non-performance of any of the Consultant's employees, subcontractors or agents) of the Contract including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods.

14.2 The Consultant's liability to indemnify WesCEF will be reduced in proportion to the extent that such claims, damages or losses were caused by or contributed to by the negligence of WesCEF.

15. CONSULTANT'S INSURANCES

15.1 The Consultant warrants that it has obtained and maintains throughout the duration of the Contract (including any Defects Liability Period) all insurance cover required by law and by the Contract including but not limited to the following:

- (a) Public and Products Liability Insurance with a limit of liability of not less than twenty million dollars (\$20,000,000) for any one occurrence;
- (b) Workers' Compensation and Employers Liability Insurance in accordance with the law of the State or Territory in which the work is performed (including common law liability as required by law);
- (c) Motor Vehicle Third Party Injury and Property Damage Insurance with a limit of liability of not less than twenty million dollars (\$20,000,000) for any one occurrence;
- (d) Professional Indemnity insurance with a minimum cover of not less than five million dollars (\$5,000,000) for any one claim. Any Professional Indemnity policy must be maintained for a period of three years following completion of this Agreement. and
- (e) Compulsory Motor Vehicle Third Party Liability Insurance as required by law in the State or Territory in which the work is performed.

15.2 The Consultant must ensure that any subcontractor engaged by the Consultant in relation to the Services effects and maintains the insurances nominated in this Clause 15.

15.3 Where the Contract includes the provision of Services, the insurances required under Clauses 15.1 and 15.2 shall:

- (a) note WesCEF for its respective rights and interests as Principal to this Agreement; and
- (b) in respect of Workers' Compensation insurance include a Principal's Indemnity extension in favour of WesCEF as Principal to the Contract.

15.4 On request, the Consultant shall provide certificates of currency as evidence of the insurances the Consultant or its subcontractors are required to effect under the terms of the Contract.

15.5 If the Consultant fails to effect or maintain any such insurance as specified above, WesCEF may effect or maintain such insurance and recover from the Consultant as a debt or set off against any amount payable to the Consultant, any premium so paid by WesCEF.

16. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not directly or indirectly subcontract or assign the Contract or any of its rights or obligations under the Contract or any part of the Contract without obtaining WesCEF's prior written consent which may be granted unconditionally or upon such conditions as WesCEF thinks fit, and may be withheld by WesCEF in its absolute discretion. The appointment of subcontractors by the Consultant shall

not relieve the Consultant from any liability or obligation under the Contract. The Consultant shall be liable for the acts and omissions of subcontractors and their employees, officers, agents and contractors as if they were acts and omissions of the Consultant. The Consultant shall ensure that its subcontractors comply with the terms of the Contract.

17. RECORDS

17.1 The Consultant will maintain a true and correct set of records in connection with the Services and all related matters.

17.2 The Consultant will retain all such records for a period of not less than TWENTY FOUR (24) months after the date of completion of the Services.

18. SEVERANCE

Each provision of this Contract will be deemed to be separate and severable from the others of them. If any provisions of this Contract are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) will not invalidate the rest of this Contract which will remain in full force and effect as if such provision had not been made a part thereof, nor will it affect the validity or enforceability of such provision in any other jurisdiction.

19. CHANGES TO BE BY WRITTEN INSTRUMENT AND LIMITED WAIVER

19.1 Subject to Clause 13, this Contract may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by each of the Parties.

19.2 The failure of any Party to enforce at any time any of the provisions of this Contract or to exercise any right will not be construed to be a waiver nor in any way to affect the validity of this Contract or any part of it or the right of any Party to enforce each and every provision and to exercise any right.

20. LAW OF CONTRACT

This Contract will be governed by and construed according to the laws in force in Western Australia from time to time and the Parties submit to the exclusive jurisdiction of the courts of that State and those courts having the right to hear appeals from them.

21. SETTLEMENT OF DISPUTES

In the event of a dispute arising between the Consultant and WesCEF, either party may give written notice to the other party stating the reason for the dispute. If the dispute has not been settled within fourteen (14) days from the date of service of the notice, either party may require by written notice to the other party that the matter be referred to senior representation for determination. Following receipt of a notice of referral by either party, both parties shall appoint a senior representative to discuss and all outstanding issues. Notwithstanding the existence of a dispute, the Consultant shall continue to perform its obligations under the Contract.

22. NOTICES

22.1 Any instructions or notices to be given by one Party to the other may be given by personally delivering the same, by facsimile or by security mail addressed to the other Party as specified on the Order or at such other address as may be notified in writing to the other Party from time to time.

22.2 Any instructions or notices so sent will be deemed to have been duly given, served and received if by:

- (a) personal delivery, on the day of delivery;
- (b) facsimile, on the day following its despatch;
- (c) mail within Australia, on the FOURTH (4th) day following the date of posting; and
- (d) airmail from outside Australia into Australia, or vice versa, or by wholly outside Australia, on the SEVENTH (7th) day following the day of posting.

23. ENTIRE CONTRACT

The Contract, as amended from time to time, represents the entire agreement between the parties and supersedes all prior arrangements whether written or oral and all letters, letters of intent, notices of award, purchase orders, understandings, representations and documents (if any) in relation to the Services or its performance given prior to the date of this Contract.

24. SURVIVAL OF TERMS

Clauses 11 (Confidentiality), 12 (Intellectual Property) and 14 (Indemnity) in the Terms and Conditions of Consultancy Services, will survive the termination or expiration of the Contract and shall remain in full force and effect.