

Cargill, Incorporated Corn Milling Terms and Conditions

1. Acceptance of this Purchase/Work Order (hereinafter referred to as "the Order") is made expressly conditional on Supplier's assent to the exact terms contained herein. None of the terms in the Order may be modified, added to, or superseded, except with the written consent of Purchaser.
2. Purchaser may cancel the Order for any or no reason by providing thirty (30) days written notice to Supplier. Purchaser may immediately cancel the Order by providing written notice to Supplier if Supplier breaches any term or condition contained herein, becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or any insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise.
3. **TIME IS OF THE ESSENCE UNDER THE ORDER.** Supplier will advise Purchaser immediately upon receipt of the Order if the specified delivery date cannot be met. Upon the failure of Supplier to comply with the delivery date, as specified, Purchaser has the option to cancel the Order without liability. Purchaser may designate any reasonable alternative delivery points, if necessary, to expedite Supplier's performance under the Order.
4. Supplier warrants that it will comply with all applicable federal, state and local laws, rules, regulations, codes and ordinances in the performance of the Order. Supplier warrants that the goods and services provided hereunder do not violate the intellectual property rights of any third party. Supplier warrants that the goods and/or services supplied shall be of the highest grade and quality unless otherwise specified; shall conform to the specifications, drawings, samples or other descriptions contained in the Order or furnished or specified by Supplier or Purchaser; shall be performed in a workmanlike manner; shall be fit and sufficient for the purpose intended; and shall be merchantable, of good material and workmanship and free from defect. Supplier further warrants that the goods furnished hereunder which are subject to the federal "Occupational Safety and Health Act" of 1970, as amended ("OSHA"), or OSHA's state equivalent, and the rules and regulations there under, will conform to all applicable standards and requirements set forth in said Act and rules and regulations. These warranties are in addition to those implied by or available at law to Purchaser and shall exist notwithstanding the acceptance and/or inspection by Purchaser of all or part of the goods or services.
5. Risk of loss and/or damage to any goods furnished hereunder shall be upon Supplier until the goods are physically delivered to Purchaser's facility specified on the face of the Order delivered and/or faxed to Supplier.
6. Except as may be provided on the face of the Order, Supplier shall pay all sales, consumer, use and other similar taxes and import duties required by law on the sale of the goods or services to be performed, and shall secure all permits, fees and licenses necessary for the execution of any services unless otherwise instructed by Purchaser in writing. Any cost incurred by Purchaser as a result of an error in shipment by Supplier, such as an over shipment, or the shipment of the wrong goods, shall be reimbursed by Supplier. Should any fine, excise tax, countervailing, antidumping or other duty or surcharge be assessed against a shipment, Supplier shall be responsible for such fines, duties or charges, whether assessed against Supplier, Purchaser, or Purchaser's customer. All payments to be made hereunder may be withheld by Purchaser on account of (1) defective goods or services not remedied, (2) claims made or filed, (3) unsatisfactory performance, (4) failure of Supplier to pay any subcontractors, or (5) any amounts owed by Supplier to Purchaser or its affiliates. The act of depositing or cashing any payment made by Purchaser shall constitute Supplier's release of any lien rights and any and all claims arising prior thereto which Supplier may have against Purchaser or Purchaser's inventory, equipment, or property for the goods supplied or services performed by Supplier for which payment was made.
7. Supplier agrees to defend, indemnify and hold harmless Purchaser, its officers, employees, agents, guests, invitees and customers from and against any and all liability, loss, damage, fine, penalty, cost or expense (including attorneys' fees) by reason of any allegation, claim, action or suit, whether for death, personal injury, property damage or otherwise, arising out of (1) failure of the goods or services supplied to meet specifications or warranties or for the goods or services to be otherwise defective; (2) any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trade secret or other proprietary right arising from the purchase, use or sale

of such goods or services; (3) any leak or spill of any goods while being transported or delivered to Purchaser; or any other materials, substances or chemicals Supplier or any of its subcontractors bring onto Supplier's premises; (4) any breach by Supplier of any term or condition contained in the Order; and/or (5) the acts, omissions, or willful misconduct of Supplier's employees and subcontractors, including their agents and representatives, and all other persons performing any services under the Order with the Supplier, whether or not caused in part by a party indemnified hereunder. In the event that the goods or services, in Purchaser's reasonable opinion, are likely to infringe a patent or copyright, or misappropriate a trade secret (and in any event, if a court of law finds that the goods or services, in fact, do infringe or misappropriate), then Supplier shall further provide Purchaser one of the following forms of relief to be chosen by Supplier: (a) obtain a license on Purchaser's behalf to continue to use or sell the goods or services; (b) redesign the goods or services so that they do not infringe or misappropriate; or (c) refund Purchaser the price paid for the goods or services in question. In any and all claims against Purchaser by any employee of Supplier, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under the Paragraph shall not be limited in any way by any indemnity or limitation on the amount or type of damages, compensation or benefits payable by or for Supplier, any subcontractor, or anyone directly or indirectly employed by any of them under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8. All drawings, specifications and other documents furnished by Purchaser and the Purchaser's consultants, and copies thereof furnished to the Supplier, are for use solely with respect to this Order. Such drawings, specifications and other documents are to be returned to the Purchaser at the completion of the Order or earlier termination of this Agreement. All drawings, specifications and other documents prepared by or for Supplier in contemplation of, in the course of, or as a result of performing the work shall be deemed works for hire and all right, title and interest therein shall vest in Purchaser, whether or not the Order is ultimately completed. To the extent such drawings, specifications or other documents cannot be considered, by operation of law, works for hire, Supplier shall assign to Purchaser all right, title and interest thereto and all copies of such drawings, specifications and other documents shall be delivered to Purchaser upon completion of the Order or earlier termination of this Agreement. Supplier agrees to provide Purchaser with reasonable assistance necessary to perfect Purchaser's interest in intellectual property created under this Agreement. This shall include, but not be limited to, the execution of documents necessary for the Copyright registration. No drawings, specifications or other documents may be used by the Supplier or any Sub-supplier or material or equipment supplier on other projects or for additions to their Project outside the scope of the work without the specific written consent of the Purchaser. The Supplier, Sub-suppliers, Sub-sub-suppliers and material or equipment suppliers are authorized to use and reproduce applicable portions of the drawings, specifications or other documents appropriate to and for use in the execution of their work under the contract documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the drawings, specifications and other documents prepared by or for the Purchaser. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Purchaser's copyrights or other reserved rights. Any intellectual property conceived or developed during the course of the Order based upon or arising from Purchaser's confidential and proprietary information shall be solely owned by Purchaser. Except as expressly provided herein, no license or right is granted hereby to the Supplier, by implication or otherwise, with respect to or under any patent application, patent claims or patent or proprietary rights of Purchaser.

9. Purchaser shall not be liable for any prevention or delay in performance resulting, in whole or in part, directly or indirectly, from fires, floods, or other acts of God, strikes, lockouts, or labor disputes, wars, riots, or embargoes, actions by foreign, federal, state or local governments, shortages of transportation equipment, fuel, or labor, or any other circumstance beyond Purchaser's reasonable control.

10. Supplier shall keep confidential all specifications and proprietary information furnished by Purchaser or prepared by Supplier in connection with the performance of the Order (including the existence and terms of the Order) and shall not divulge or use such specifications or information for the benefit of itself or any other party, except as required for the efficient performance of the Order. Upon completion of the Order, Supplier shall make no further use, either directly or indirectly, of any such specifications or information. All drawings, specifications, plans and formulas developed by Supplier in the course of providing the goods or services to Purchaser shall be works for hire, and Purchaser shall have title thereto.

11. Purchaser shall have a reasonable time after delivery or performance within which to inspect the goods or services. Purchaser shall give written notice to Supplier of any rejection of such goods or services, and in the case of rejected goods, the same shall be returned to Supplier at Supplier's expense or otherwise disposed of as Supplier shall reasonably request. The cost of inspection of goods or services rightfully rejected shall be charged to Supplier. If reasonable inspection discloses that part of the goods or services received is defective or nonconforming, Purchaser shall have the right to cancel any unshipped goods or unperformed services under the Order. Payment for goods on the Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Purchaser may have against Supplier. The making or failure to make any inspection of, or payment for, or acceptance of the goods or services, shall in no way impair Purchaser's right to reject nonconforming goods or services, recover damages, or to exercise any other remedies to which Purchaser may be entitled. Acceptance of any goods or services by Purchaser after breach of the terms and conditions of the Order by Supplier shall not waive any rights or remedies accruing to Purchaser as a result of such prior breach.

12. **INVOICING AND PAYMENT.** Vendor will invoice Purchaser for the amounts due under the Order. Except as otherwise set forth on the face of the Order, Purchaser will pay Vendor all undisputed amounts within sixty (60) calendar days after receipt of the applicable invoice or receipt of the goods (or performance of the services), whichever is later or within such lesser period of time as is required by Law.

13. **BILLING DISPUTES.** Vendor agrees to reconcile all charges, invoices, costs, expenses or other amounts due from Cargill in writing within 120 days of the date of initial invoice or 120 days after the transaction or occurrence at issue, whichever is earlier. Vendor agrees that if it does not bring said charges, invoices, costs, expenses or other amounts due from Cargill to Cargill's attention in writing within such frame, it thereby waives any rights associated with such claims, regardless as to the validity of the claims.

14. In the event of Supplier's failure to perform any of its obligations hereunder, Purchaser may, at its option, recover from Supplier its expenses, cancellation fees, foreign exchange losses, the Order price less market value differential at the point of delivery, reasonable attorneys' fees, and any other actual, incidental, indirect, special or consequential damages, and may exercise any and all rights and remedies as may be available to Purchaser under the Uniform Commercial Code, common law or in equity. Notwithstanding anything herein to the contrary, nothing in the Order shall be deemed to limit any rights Purchaser may have against Supplier either in law or equity.

15. Where applicable, Supplier shall comply with the requirements of the Fair Labor Standards Acts of 1938, as amended, in producing the goods or performing the services hereunder. Purchaser is an equal opportunity employer, and the Order is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapter 60 and 61. Unless the Order is exempt, there is incorporated herein by reference: 41 C.F.R. Section 60-1.4; 41 C.F.R. Section 60-250.5; 41 C.F.R. Section 60-741.5; and 41 C.F.R. Section 61-250.10. As applicable, contractor also agrees to comply with Executive Order 13201 in accordance with 29 C.F.R., part 470.

16. Any controversy or claim arising out of, or relating to the Order or the breach thereof, shall be settled by arbitration in accordance with the commercial rules (or in case of construction services, the construction rules) then in effect of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Such award shall be final and binding and the arbitrator shall not be empowered to award punitive or exemplary damages. The laws of the State of Minnesota, and not the Convention on the International Sale of Goods, shall apply.

17. Supplier shall at all times retain title and ownership to any and all materials, substances or chemicals not incorporated into the work that Supplier or any subcontractor brings onto Purchaser's premises. Supplier shall be solely responsible for the handling, transportation and disposal of any and all materials, substances and chemicals Supplier or any subcontractor brings onto Purchaser's premises, and any waste generated or resulting from the use thereof. Supplier shall not dispose or permit the release of any materials, substance or chemical, or any waste generated or resulting from the use thereof on Purchaser's premises. Supplier shall handle, transport and dispose of any and all

substances and chemicals, including but not limited to hazardous wastes and substances as defined by applicable federal, state and local laws, rules, regulations, codes and ordinances.

IN THE EVENT SUPPLIER WILL PERFORM SERVICES HEREUNDER, ADDITIONAL CONDITIONS #18 THROUGH #21 SET FORTH BELOW SHALL ALSO BE APPLICABLE:

18. Supplier shall be solely responsible for all construction methods and procedures and for coordinating all portions of the services, and shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the services. Supplier shall give all notices and comply with all applicable laws, rules, regulations, codes and ordinances of any public authority bearing on the performance of the services and shall notify Purchaser if the drawings and specifications are at variance therewith. Supplier shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the services and shall comply with all federal and state safety laws, rules, regulations, codes and ordinances.

19. Supplier is generally discouraged from using Purchaser-supplied equipment, tools, scaffolding or other materials. Supplier hereby acknowledges that Supplier shall inspect any Purchaser-supplied equipment, tools, scaffolding and/or other materials, and that Supplier will not use the same unless they are suitable for their intended use and conform to any and all applicable laws, rules, regulations, codes and ordinances. Supplier assumes full responsibility for the proper use of such equipment, tools, scaffolding and/or other materials and shall return the same to Purchaser in a like condition in which they were borrowed. Supplier agrees to release, indemnify and hold harmless Purchaser, its employees, officers and agents from and against any and all claims, damages, demands, liabilities, losses, fines, penalties, costs and expenses, including attorneys' fees, of whatsoever kind or character arising out of or in any way connected with the use of Purchaser-supplied equipment, tools, scaffolding and/or other materials.

20. Supplier shall purchase and maintain such insurance as will protect it from claims under workers' compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the services performed under the Order, whether such services be performed by Supplier, Purchaser, or any of Supplier's subcontractors or anyone directly or indirectly employed by any of the foregoing. Such insurance shall include, without limitation, workers' compensation, employer's liability, commercial general liability (including personal injury and broad form property damage) and automobile liability. Such insurance shall be written for not less than \$1,000,000 per occurrence, or as required by law, whichever is greater, shall include contractual liability insurance as applicable to Supplier's obligations under Paragraph 7 herein, and shall include a waiver of subrogation in favor of Purchaser. Certificates of such insurance, which shall name Purchaser as an "additional insured" on the general and automotive liability policies, shall be filed with Purchaser prior to commencement of services hereunder and upon policy renewals thereafter. Such coverages shall provide that the policies will not be cancelled or materially altered until at least thirty (30) days prior written notice has been given to Purchaser.

21. Purchaser hereby relinquishes control over the construction zone to Supplier for the duration of any construction related services to be performed under the Order and Supplier hereby assumes exclusive control over services performed in the construction zone. To the extent possible, Supplier shall physically separate the construction zone from the remainder of the premises. Purchaser's use of the construction zone shall fully cease upon Supplier's entrance to the construction zone. Supplier is hereby assigned the full responsibility for safety and management over persons and property within the construction zone. Supplier agrees to explicitly warn and notify its subcontractors and its and their employees, agents, representatives, guests and visitors of any risks, hazards, or peculiar dangers associated with the construction zone for which Purchaser has made Supplier aware, or for which Supplier should be reasonably aware. Supplier shall periodically, as necessary, but not less than once a day, inspect the construction zone for risks, hazards and dangers, whether patent or latent, and Supplier shall thereafter eliminate such risks, hazards or dangers, or to the extent not eliminated, warn its employees and visitors of such risks, hazards or dangers. The foregoing responsibilities of Supplier shall continue throughout the period of construction.