

CARGILL MEAT SOLUTIONS TERMS AND CONDITIONS (PURCHASING)
(Canada)

1. By accepting this Purchase/Work Order (hereinafter referred to as "the Order") Supplier assents 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 None of the terms in the Order may be modified, added to, or superseded, except with the written consent of Cargill.
2. Cargill may cancel the Order without liability for any or no reason by providing thirty (30) days written notice to Supplier. Cargill 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, in which event Paragraph 12 below will apply.
3. TIME IS OF THE ESSENCE UNDER THE ORDER. Supplier will advise Cargill 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, Cargill has the option to cancel the Order, in which event Paragraph 12 below will apply. Cargill may designate any reasonable alternative delivery points, if necessary.
4. Supplier warrants that it will comply with all applicable federal, provincial and municipal laws, rules, regulations, codes and ordinances in the performance of the Order. 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 Cargill; 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 applicable provincial Occupational Health and Safety Act or similar legislation and regulations thereunder, will conform to all applicable standards and requirements set forth in said Act and regulations. These warranties are in addition to those implied by or available at law to Cargill and shall exist notwithstanding the acceptance and/or inspection by Cargill 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 Cargill'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 Cargill in writing. Notwithstanding the foregoing, Cargill shall pay G.S.T. and provincial sales tax, if applicable. Any cost incurred by Cargill 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, Cargill, or Cargill's customer. All payments to be made hereunder may be withheld by Cargill 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 Cargill or its affiliates. The act of depositing or cashing any payment made by Cargill shall constitute Supplier's release of any lien rights and any and all claims arising prior thereto which Supplier may have against Cargill or Cargill'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 Cargill, its affiliated companies or parent companies, and their 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 Cargill; (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 Cargill'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 Cargill one of the following forms of relief to be chosen by Supplier: (a) obtain a license on Cargill'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 Cargill the price paid for the goods or services in question. In any and all claims against Cargill 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 this 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 Cargill and Cargill'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 Cargill at the completion of the Order or earlier termination of this Agreement. All drawings, specifications and other documents, concepts, inventions and works prepared by Supplier in contemplation of, in the course of, or as a result of providing goods or services ("Works") shall be deemed works for hire and all right, title and interest therein shall vest in Cargill, whether or not the Order is ultimately completed. To the extent such Works cannot be considered, by operation of law, works for hire, Supplier shall assign to Cargill all right, title and interest thereto and all copies of such Works shall be delivered to Cargill upon completion of the Order or earlier termination of this Agreement. Supplier agrees to provide Cargill with reasonable assistance necessary to perfect Cargill'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 Works may be used by the Supplier or any subsupplier 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 Cargill.
9. Cargill 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 Cargill's reasonable control.
10. Supplier shall keep confidential all specifications and proprietary information furnished by Cargill 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.

11. Cargill shall have a reasonable time after delivery or performance within which to inspect the goods or services. Cargill 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, Cargill 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 Cargill 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 Cargill's right to reject nonconforming goods or services, recover damages, or to exercise any other remedies to which Cargill may be entitled. Acceptance of any goods or services by Cargill after breach of the terms and conditions of the Order by Supplier shall not waive any rights or remedies accruing to Cargill as a result of such prior breach.

12. In the event of Supplier's failure to perform any of its obligations hereunder, Cargill 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 Cargill under the common law or equity. Notwithstanding anything herein to the contrary, nothing in the Order shall be deemed to limit any rights Cargill may have against Supplier either in law or equity.

13. Supplier agrees to comply with applicable Construction Liens and/or Builders' Liens legislation. Such Construction Liens and/or Builders' Liens legislation shall govern the payment of monies by Cargill to Supplier. Prior to final payment under the Order, Supplier shall provide to Cargill a statutory declaration that all subcontractors, all suppliers and material men, and all assessments under applicable Workers' Compensation and/or Workplace Safety and Insurance Legislation have been paid in full.

14. The Order and the Purchase Order contain all of the terms of the contract between the parties, and no representation of Cargill or any agent of Cargill shall be binding on Cargill unless the terms thereof are contained herein.

15. This Order shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, successors and assigns of the parties, but this Order shall not be assigned by Supplier without the prior written consent of Cargill.

IN THE EVENT SUPPLIER WILL PERFORM SERVICES HEREUNDER, ADDITIONAL CONDITIONS #16 THROUGH #23 SET FORTH BELOW SHALL ALSO BE APPLICABLE:

16. No additional work shall be done without written Contract Change Orders, signed by Cargill's Project Manager.

17. 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 Cargill 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, provincial and municipal safety laws, rules, regulations, codes and ordinances as well as Cargill's facility's safety rules. For work or services to be performed within the Province of Alberta, the Supplier shall be the prime contractor, for all purposes of the Occupational Health and Safety Act (Alberta).

18. The relationship of the parties is intended to be that of independent contractors. Except as otherwise provided herein, Supplier shall in all respects be responsible for payment for, and the direction and control of, its agents, servants, employees and equipment. Supplier shall be responsible for any payments to or assessments from, any Workers' Compensation and Workplace Safety and Insurance Board involving Supplier, any sub-contractor, and anyone employed by any of them. Cargill shall be indemnified by Supplier for any monies Cargill is required to pay pursuant to any Workers' Compensation or Workplace Safety and Insurance Act. If permitted by the Workers' Compensation or Workplace Safety and Insurance Act of the province in which the work is to be performed, Supplier shall open and maintain an account with the applicable Board of such province. Certificates of Supplier's coverage shall be filed with Cargill prior to commencement of the work.

19. Supplier is generally discouraged from using Cargill-supplied equipment, tools, scaffolding or other materials. Supplier hereby acknowledges that Supplier shall inspect any Cargill-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 with 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 Cargill in a like condition in which they were borrowed.

Supplier agrees to release, indemnify and hold harmless Cargill, 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 Cargill-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, Cargill, 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 \$2,000,000 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 Cargill. Certificates of such insurance, which shall name Cargill as an "additional insured" on the general and automotive liability policies, shall be filed with Cargill 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 Cargill.

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 Cargill 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.

22. 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 Cargill'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 Cargill's premises, and any waste generated or resulting from the use thereof. Supplier shall not dispose or permit the release of any material, substance or chemical, or any waste generated or resulting from the use thereof on Cargill'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, provincial and local laws, regulations, codes and ordinances.

23. Supplier and its subcontractors, including its and their employees, agents, representatives, guests and visitors, shall abide by all of Cargill's facility's safety rules and regulations while on or about Cargill's premises. Without prejudice to any other remedy Cargill may have, violation of or failure to enforce facility safety rules and regulations or breach of Supplier's responsibilities in Paragraphs 17, 21 or 22 of the Order is cause for (1) immediate removal from the premises and restrictions on future entry, and (2) immediate termination of this Order pursuant to Paragraph 2 with no further obligation of Cargill to Supplier.

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