

TERMS OF SUPPLY OF PRODUCTS

1. TERMS OF SUPPLY OF PRODUCTS

- 1.1 The terms and conditions set out below apply to every supply of Products made by the Supplier to Graymont. By accepting an Order from Graymont the Supplier agrees that it is bound by these Terms of Supply of Products and that the Supplier's own terms and conditions do not apply.
- 1.2 Where Graymont has signed a separate written supply agreement with the Supplier these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate supply agreement, in which case the relevant provisions of the supply agreement shall prevail.
- 1.3 Where the Supplier is certified to ISO9001 or ISO9002, this Contract must be fulfilled in accordance with the terms of that certification and any other standards.

2. DEFINITIONS

Contract means any contract which comprises these Terms and any Purchase Order issued by Graymont.

Graymont means Graymont (NZ) Limited.

Order means a Graymont purchase order placed with the Supplier for the Products.

Products means all goods or other items covered by the Contract, including raw materials, processed materials or fabricated products.

Supplier means the person, partnership, company or other legal entity to whom the Contract is issued and includes its employees, agents, contractors and sub-contractors.

Service Agreement means the Graymont Service Agreement entered into between Graymont and the Supplier for the supply of services by the Supplier, if any.

Terms means these Terms of the Supply of Products, including any variation to these Terms.

3. RESPONSIBILITY FOR PURCHASE

- 3.1 Graymont will not be responsible for any order unless it is issued on a Contract or Purchase Order. No variation of a Contract will be effective unless approved in writing by Graymont. The number appearing on the Contract or Purchase Order must be quoted on all invoices, delivery dockets and parcels.

4. QUALITY

- 4.1 The Supplier warrants that the Products:
- conform with the description provided by the Supplier;
 - conform with any applicable specifications agreed by Graymont and the Supplier;
 - conform with all applicable industry standards and Codes of Practices;
 - are of merchantable quality and are fit for the purpose for which they are sold;
 - are free of defects in material, workmanship and design;
 - are new (unless otherwise specified); and
 - are free from all liens and encumbrances and the Supplier has good marketable title thereto.
- 4.2 These warranties are in addition to any other warranties or guarantees contained in the Contract or implied by law or provided by the Supplier or any third party. Where the Products are under warranty from a manufacturer or other party, the Supplier shall transfer the benefit of such warranties to that party.

5. ORDERING

- 5.1 Graymont may, if requested by the Supplier, provide forecasts of estimated requirements of the Products. Notwithstanding anything to the contrary in the Contract, the Supplier acknowledges that:
- all forecasts are estimates only and Graymont is not obliged to purchase any minimum purchase volume;
 - Graymont will have no liability to the Supplier in the event that the actual volume of Products purchased falls below any forecast estimates;
 - Graymont's obligations arise only in respect of Orders placed under, and subject to the terms of this Agreement; and
 - the Contract does not confer any exclusivity on the Supplier in respect of the supply of Products.
- 5.2 The Supplier shall notify Graymont as soon as it becomes aware that it may not be able to fulfil an Order on the delivery date.

6. LIABILITY

- 6.1 The Supplier shall, without limitation, indemnify Graymont for any loss, damage, expense, claim or liability suffered or incurred by Graymont, whether consequential or otherwise, as a result of a breach of any of the warranties

contained in clause 4 above, or other breach of these Terms.

- 6.2 Notwithstanding clause 6.1, and without limiting the generality thereof, the Supplier shall repair or replace, at Graymont's option, all Products which are or become defective or otherwise fail to comply with all warranties contained in clause 4 within 30 days of notification of such defect or failure from Graymont.

7. LOSS OR DAMAGE IN TRANSIT

- 7.1 Graymont shall advise the Supplier of any partial loss, damage, defects or non-delivery of any separate part of a consignment of Products within 60 days of the date of delivery of the consignment or part consignment.
- 7.2 The Supplier shall make good free of charge to Graymont any loss of or damage to or defect in the Products where notice is given by Graymont under this clause.

8. REJECTION

- 8.1 Notwithstanding any other provision of these Terms, Graymont may reject Products not conforming for any reason whatsoever to the Contract upon delivery of such Products or within sixty (60) days thereafter. Any payment by Graymont for such Products shall not prejudice its right of rejection contained herein. The Supplier shall reimburse Graymont for the purchase price paid by Graymont with respect to such Products; and any costs incurred by Graymont in connection with the rejection of such Products.

9. DELIVERY

- 9.1 The date and place of delivery of the Products shall be the point of acceptance by Graymont at the place specified in the Contract, unless otherwise agreed between Graymont and the Supplier.
- 9.2 Time is of the essence insofar as it applies to the obligations of the Supplier. If any Products are not delivered within the time specified in the Contract, Graymont may either:
- refuse to accept such Products and terminate the Contract; or
 - cause the Supplier to deliver the Products by the most expeditious means, whereupon any additional delivery charges in excess of those which would apply for the usual means of delivery, shall be borne by the Supplier.

- 9.3 If any Products are not delivered to the place specified in the Contract or otherwise agreed between Graymont and the Supplier, the Supplier will be responsible for any additional expense incurred in delivering them to their correct destination.

10. TITLE AND RISK

- 10.1 Title to and risk of loss in the Products shall pass to Graymont upon acceptance of delivery in accordance with clause 10 but without prejudice to any right of rejection or other rights, which may accrue to Graymont in accordance with these Terms. For the avoidance of doubt, all risk in the carriage of the Products to the point of delivery shall rest with the Supplier.
- 10.2 The Supplier is not granted nor entitled to any lieu, charge or other security interest (as defined in the Personal Property Securities Act 1999) in respect of the Products.

11. INSPECTION IN PROGRESS AND PRIOR TO DESPATCH

- 11.1 The Supplier agrees that Graymont or its agents shall have the right of inspection of all work performed pursuant to the Contract while in any stage of engineering, manufacture or installation, and of the Products prior to their despatch. The Supplier shall make this a condition of any sub-contracted work.
- 11.2 Graymont or its agents shall have the power to reject any work performed or being performed or any Products that do not conform to the Contract, whereupon the work or Products rejected shall be re-performed at no additional cost to Graymont. Any such inspection shall not relieve the Supplier of any obligations contained in the Contract or at law.

12. INTELLECTUAL PROPERTY

- 12.1 The Supplier shall indemnify Graymont in respect of any loss, damage, expense, claim or liability suffered or incurred by Graymont as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Products supplied pursuant to the Contract.

13. PRICE

- 13.1 The purchase price for the Products payable by Graymont shall be that specified in the Contract and be fixed firm, and cannot be varied without the prior written agreement of Graymont. The purchase price specified in the Contract shall include all taxes (excluding GST), levies, transport and insurance charges and shall be on Delivered Duty Paid (DDP) basis unless otherwise agreed.
- 13.2 Unless otherwise agreed in writing, all amounts payable by Graymont under this Agreement will be payable monthly in arrears. The Supplier will provide Graymont with a valid tax invoice setting out the amount payable for the previous month by the fifth Business Day of the calendar month following the

- month to which the invoice relates.
- 13.3 Graymont shall pay any invoice rendered by the Supplier by the 30th day of the month following the month in which the invoice is received. Payment shall be made by direct credit to the bank account nominated by the Supplier.
- 13.4 If any item or part of any item in an invoice is disputed, Graymont shall notify the Supplier prior to the last Business Day of the month in which the invoice is submitted specifying the item disputed, the reason for the dispute and the amount that Graymont considers is the appropriate amount which should have been charged.
- 14. SUB-CONTRACTING AND ASSIGNMENT**
- 14.1 The Supplier shall not assign the whole of its rights or obligations hereunder or sub contract any obligation under the Contract (with the exception of freight) without the prior written consent of Graymont. Graymont's consent to the Supplier sub-contracting any work to be performed shall not relieve the Supplier of its responsibility for the whole of the work to be performed pursuant to the Contract or of any obligations contained in the Contract or at law.
- 15. PACKAGING, STORAGE AND HAZARDOUS PRODUCTS**
- 15.1 Products shall be packed in accordance with any packaging requirements or specifications communicated by Graymont to the Supplier. Any proposed alteration to Graymont's packaging requirements or specifications shall be subject to Graymont's prior approval. All packages must be clearly marked with the Contract number and the location of delivery.
- 15.2 The Supplier shall comply with all applicable New Zealand and International Laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Products.
- 15.3 All Products, which are hazardous products, must be marked by the Supplier with international danger symbol(s) and display the name of the material in English. Products classified as "Hazardous Substances" in accordance with the Hazardous Substances and New Organisms Act 1996 (HSNO) must be packed and marked in accordance with that Act. Delivery and other documents must include disclosure of the hazard(s) and name of the material in English. Products must be accompanied by emergency material in the form of written instructions, labels or markings and Material Safety Data Sheets.
- 15.4 All information held by or reasonably available to the Supplier regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Products shall be immediately communicated to Graymont, and all relevant documentation about the Products and such hazards shall be supplied with the Products.
- 15.5 Where required by Graymont or at law, the Supplier shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Products delivered pursuant to the Contract.
- 15.6 In line with Graymont's environmental policy, packaging should be kept to a minimum without increasing the risk of damaged Products. The packaging should be recyclable wherever possible, to reduce solid waste to landfill.
- 16. INSURANCE**
- 16.1 The Supplier shall maintain adequate insurance including, without limitation, public liability, automotive and other means of transportation/freight liability insurance and product damage insurance upon such terms and for such amounts as are reasonable in the circumstances of the Contract.
- 17. FORCE MAJEURE**
- 17.1 Neither the Supplier nor Graymont shall be liable to the other for default or delay in performing its obligations under the Contract, and Graymont shall be entitled to cancel the Contract without liability to the Supplier, caused by any occurrence beyond a party's reasonable control including, without limitation, fire, industrial disturbance, riot, war, act of God and governmental order or regulation, PROVIDED THAT force majeure does not include an event which the party affected could have prevented or overcome by exercising a standard of reasonable care, and the party affected by such occurrence gives written notice thereof to the other party within 7 days of the commencement of that occurrence.
- 18. GRAYMONT'S RIGHTS IN SPECIFICATIONS, PLANS, INFORMATION ETC**
- 18.1 Any specifications, plans, drawings, process information, patterns or designs supplied by Graymont to the Supplier in connection with the Contract shall remain the property of Graymont, and any information derived there from or otherwise communicated to the Supplier in connection with the Contract shall be kept confidential and shall not, without the written consent of Graymont be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns or designs supplied by Graymont to the Supplier must be returned to Graymont on request by Graymont. Any invention or improvement made by the Supplier attributable in whole or in part to such specifications, plans, drawings, process information, patterns or designs shall be the property of Graymont.
- 19. WORK ON GRAYMONT'S SITE**
- 19.1 Should the Contract require the Supplier to carry out any work on a Graymont site, such work shall be subject to, in addition to the conditions of the Contract and any conditions imposed by law, the conditions contained in the Service Agreement and requirements of Graymont for the particular site.
- 20. HEALTH, SAFETY & ENVIRONMENT**
- 20.1 The Supplier will ensure that all Products and services comply with New Zealand health, safety, and environmental legislative requirements, standards and codes, hazardous chemical requirements, performance criteria and specifications.
- 20.2 Graymont supports the purchase of recycled and environmentally preferable products in order to minimise environmental impacts. The products should perform satisfactorily and be of comparable cost and quality to other products. "Environmentally preferable" are products that have a lesser impact on human health and the environment when compared with competing products.
- 21. DISPUTES**
- 21.1 The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a dispute arises ("Dispute"), the party claiming that a Dispute has arisen shall serve notice on the other party stating the subject matter and details of the dispute. After receipt of the notice, senior management of both parties shall meet within ten (10) working days and shall attempt in good faith to resolve the Dispute. If the senior managers are unable to resolve the dispute within five (5) working days, then they shall refer the Dispute to the chief executive officers (or their nominees) of both parties, who shall meet to resolve the Dispute in good faith.
- 21.2 If the chief executives fail to resolve the Dispute within twenty (20) working days of the notice of the Dispute, either party may take such legal action including the commencement of legal proceedings as deemed appropriate or necessary to resolve or determine the Dispute.
- 22. CORPORATE SOCIAL RESPONSIBILITY**
- 22.1 The Supplier warrants to Graymont that it will at all times adhere to general principles of corporate social responsibility and shall ensure in particular that the Supplier shall:
- (a) not employ child labour or forced labour;
 - (b) support Freedom of Association and collective bargaining;
 - (c) comply with New Zealand laws prohibiting discrimination;
 - (d) not support corporal punishment, mental or physical coercion or verbal abuse;
 - (e) respect legally mandated work hours; and
 - (f) guarantee fair compensation to its employees.
- 23. GENERAL**
- 23.1 **Revision to Terms:** The Supplier acknowledges and agrees that these Terms may be altered by Graymont from time to time and that the then current version of the Terms shall apply to the supply of the Products. Graymont agrees to notify the Supplier of any changes to the Terms if that change is applicable to any Products already ordered. The Supplier agrees that it shall, within 10 working days of notification of changes to the Terms, advise Graymont if it does not accept the amended Terms. If the Supplier does not notify Graymont that it rejects the amended Terms, the revised Terms will be deemed to apply to all Products supplied by the Supplier after the date of notification.
- 23.2 **Confidentiality:** The Supplier agrees to treat as strictly confidential any information that it acquires in relation to Graymont, including all information relating to Graymont's business and the existence and contents of the Contract except to the extent required by any act, regulation or statutory requirement. No public statements may be made about the supply of Products to Graymont, except upon the prior written consent of Graymont.
- 23.3 **Waiver:** Graymont's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Graymont's right to exercise or enforce such right or any other right in the future.
- 23.4 **Severance:** Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding.
- 23.5 **No Partnership:** Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.
- 23.6 **Entire Agreement:** Except as otherwise agreed in writing, including in accordance with clause 1.2, these Terms constitute the entire agreement between the parties.
- 23.7 **Notice:** Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the third working day following the day of posting. A notice sent by facsimile or electronic mail shall be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.
- 23.8 **Jurisdiction:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.