

Terms and Conditions

v2021-06-01

1. Entirety of the Agreement.

- (a) These *Terms and Conditions*, together with any terms stated on Buyer's purchase order form or the terms of any Buyer agreement incorporating these *Terms and Conditions*, constitute the entire agreement between Buyer and Seller with respect to the services performed and/or goods sold and supersedes and replaces any prior or contemporaneous agreement between Buyer and Seller with respect thereto (hereinafter, collectively, "Agreement"), except with respect to obligations already accrued on the effective date of Buyer's purchase order or agreement.
- (b) If the provisions of Buyer's purchase order form, or any Buyer agreement incorporating these *Terms and Conditions*, and these *Terms and Conditions* directly conflict, then the provisions of Buyer's purchase order form, or any Buyer agreement incorporating these *Terms and Conditions*, will prevail.
- (c) No conditions, understandings, or agreements purporting to amend, waive, modify, extend, or vary any terms of the Agreement will be binding or of any force or effect unless hereafter made in writing and signed by an officer of Buyer and an authorized representative of Seller.
- (d) Buyer objects to and will not be bound by any additional, different, or inconsistent terms or conditions in Seller's purchase order confirmation or other documents from Seller, and shipment pursuant to a purchase order confirmation of Seller that contains additional, different, or inconsistent terms does not constitute acceptance of such terms.
- (e) The Agreement is intended as the final expression of Buyer and Seller and there are no oral representations, stipulations, warranties, agreements, or understandings with respect to the subject matter of the Agreement that are not fully expressed therein.
- (f) Neither the Agreement nor its execution has been induced by any representation, stipulation, warranty, agreement, or understanding of any kind other than those expressed in writing.
- (g) No prior course of dealing or performance or usage of trade not expressly set forth in the Agreement will be admissible to explain, supplement, modify, or contradict any terms or conditions of the Agreement.
- (h) By executing the Agreement, acknowledging receipt thereof, or engaging in conduct called for by the Agreement, including the commencement of performance of any services or the shipment of any goods, Seller agrees, at minimum, to these *Terms and Conditions*.

2. Relationship of the Parties.

- (a) Buyer and Seller may be hereinafter referred to collectively as "Parties" and individually as a "Party".
- (b) For purposes of the Agreement, "Affiliate" or "Affiliates" means, with respect to a Party, any other person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with such Party; for purposes of this definition, "control", when used with respect to a person or entity, means the power to direct the management and policies of such person or entity directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.
- (c) Each Party assumes its duties under the Agreement as an independent contractor and nothing contained in the Agreement will be construed as inconsistent with such independent contractor relationship; neither Party is an employee or agent of the other Party and as such, neither Party will have the power or authority, express or implied, to pledge credit, to enter into any agreement, or to proffer or give any representation, warranty, or guarantee on behalf of the other Party.
- (d) Each Party acknowledges and agrees it will not present itself to any third party as having authority to bind or contract on behalf of the other Party, nor any Affiliate thereof, and will make no implicit or explicit representation to that effect.
- (e) The Agreement is not intended to create nor constitute a joint venture, pooling arrangement, partnership, agency, master-servant, or a business entity, organization, or combination of any type, whatsoever.
- (f) Seller will provide all labor, equipment, and materials required to perform the services pursuant to the Agreement, except such labor, equipment, and materials as may be specifically stated in the Agreement to be provided by Buyer.
- (g) Seller will not utilize subcontractors, including, but not limited to, independent consultants or agents, for performance under the Agreement without prior written approval from Buyer.
- (h) Seller will safely, diligently, and carefully perform the services pursuant to the Agreement in a good and workmanlike manner and, if subcontracting is permitted, will be fully responsible for all services performed by its subcontractor(s).
- (i) The services provided by Seller pursuant to the Agreement will be performed by qualified and efficient employees and/or subcontractors, if subcontracting is permitted, in strict accordance with recognized best practices and the standards and special instructions issued by Buyer.

3. Termination.

- (a) Any other provision to contrary in the Agreement notwithstanding, Buyer may, with or without cause, by written notice, terminate the Agreement at any time without liability, except for the prorated price of services performed and/or goods delivered pursuant to the Agreement prior to the notice of termination or thereafter per the termination notice; such right of termination will include, but not be limited to, cancellation of the Agreement in its entirety prior to commencement.
- (b) Upon receipt of notice of termination from Buyer pursuant to Section 3(a) herein, Seller will, unless the notice requires otherwise, immediately:
 - (i) take no further action in furtherance of services and/or goods related to the Agreement, other than as may be necessary to comply with the termination notice;
 - (ii) discontinue performance of services and/or delivery of goods related to the Agreement on the date and to the extent specified in the termination notice; and
 - (iii) notify Buyer in writing of reasonable costs claimed and rightful payments owed, if any.

4. Compensation and Taxes.

- (a) Rates of compensation will be in accordance with Buyer's purchase order or agreement and will include, to the extent applicable and unless otherwise agreed in writing and signed by an officer of Buyer and an authorized representative of Seller, all of Seller's fees, costs, taxes, incentives, benefits, allowances, and overhead.
- (b) Prices are subject to reduction for charges or losses due to outage, imperfections, or defects in service and/or goods, or noncompliance with sample, embodied, or implied specifications, or delivery date.
- (c) Seller will pay all taxes, assessments, excises, impositions, licenses, and fees (including interest or penalties, if any) levied, assessed, or imposed on, or on account of, the execution or performance of the Agreement or the receipts therefrom or the materials therefor; any taxes Seller is obligated to collect will be added to the invoice as a separate charge to be paid by Buyer.
- (d) For any tax exempt or zero rated sale, Buyer will provide Seller with exemption certificates or other proof in a form acceptable to the appropriate taxing authority.

- (e) For any personal property taxes assessed against the goods, the Party having title to the goods at the time such tax liability accrues will be responsible for payment of such taxes.
 - (f) When required to do so by law, Buyer may withhold state or federal taxes and pay such taxes to the state; or, in instances where Buyer is required to obtain clearance from the state that Seller has satisfied its tax liability to that state, delay payment under the Agreement up to the amount of the tax pending such clearance.
 - (g) Any and all changes in specifications, price, or scope for any services performed and/or goods sold pursuant to the Agreement must be approved in writing by Buyer prior to effectuation of such changes.
5. Delivery. Unless otherwise agreed in writing and signed by an officer of Buyer and an authorized representative of Seller, all sales are FOB Buyer's destination and unless Buyer specifically agrees to pay all or some part thereof, Seller will pay the freight or other delivery charges, inspection fees, if any, and all other charges levied or imposed on goods per delivery.
6. Title and Risk of Loss.
- (a) Unless otherwise designated, title, risk of loss, and all other incidents of ownership will transfer from Seller to Buyer upon payment therefor or delivery at either Buyer's premises or another site designated by Buyer, whichever occurs first; provided, however, any loss or damage, whenever occurring, resulting from Seller's nonconforming packaging, crating, or delivery will be borne by Seller.
 - (b) Goods will be packaged and supported in a manner ensuring safety and protection from damage during shipment.
 - (c) Goods will be sufficiently marked on the outside of the package to preclude the need for opening the package for identification.
 - (d) Unless otherwise agreed in writing and signed by an officer of Buyer and an authorized representative of Seller, goods will be shipped collect via the carrier named per the Agreement or, if no carrier is named, then via the most expedient and economical means possible.
 - (e) In the event Buyer agrees to prepay freight, charges for freight must be shown on the original receipt; markup on freight charges is strictly prohibited.
 - (f) Diversion of shipments contrary to the laws of the United States of America is strictly prohibited.
7. Acceptance.
- (a) Seller will provide all necessary supervision, quality control programs, inspections, and/or verifications required to ensure compliance with its obligations under the Agreement.
 - (b) Buyer, or its representative, may, at any reasonable time, witness, inspect, and/or test in order to verify Seller's compliance with its obligations under the Agreement; provided, however, the foregoing notwithstanding, the presence of or observation, inspection, or testing by Buyer, or its representative, will not relieve Seller from any of its obligations or responsibilities under the Agreement and Buyer may reject and return, without prior notification, at Seller's expense and risk, any nonconforming goods.
 - (c) If applicable, Seller grants Buyer, or Buyer's representative, free access to Seller's facilities and/or its subcontractor's facilities, if subcontracting is permitted, at any reasonable time and will provide such information as Buyer may reasonably request in connection with any verification or inspection.
 - (d) If Buyer discovers any services performed and/or goods sold pursuant to the Agreement in any way do not conform to the requirements of the Agreement, then Buyer must promptly notify Seller in writing and upon receipt thereof, Seller, at its sole cost and expense, will take effective measures to satisfactorily correct any nonconformance within a reasonable time.
 - (e) If, within a reasonable time period, Seller fails to remedy the nonconformance, then Buyer may remedy such nonconformance by its own employees or third parties and recover from Seller the total cost to Buyer thereof or deduct same from any monies due or which may become due to Seller.; if no amount or if insufficient amount is available to fully offset Buyer's cost, then Seller, upon receipt of Buyer's written notice of Seller's outstanding obligation, will promptly remit to Buyer the amount due and owing pursuant to this Section 7(e).
 - (f) Upon satisfactory completion and/or performance of services provided to Buyer pursuant to the Agreement, Seller must make written request to Buyer for, and Buyer must provide written confirmation of, final acceptance thereof.
 - (g) Neither final acceptance nor payment of any invoice will constitute a waiver by Buyer, and will not relieve Seller of any obligation which extends beyond the date of such final acceptance or payment, including, but not limited to, any defects of service, workmanship, and/or materials, or any other continuing obligation expressed or reasonably construed under the Agreement, discovered or developing after such payment or issuance of such final acceptance.
8. Payment.
- (a) Payment terms will be net sixty (60) days, via electronic funds transfer, from receipt of a proper invoice meeting Buyer's requirements for processing; a proper invoice must include, at a minimum, (i) Seller's name, (ii) Buyer's purchase order number or agreement number, (iii) a full description of the services performed and/or goods delivered, (iv) the unit price of the services performed and/or goods delivered, including specific breakdowns and delineations as to the cost of (a) "Labor", (b) "Materials", (c) "Rental", and/or "Freight", as applicable, (v) the country of origin, if other than the United States of America, and (vi) for any invoice other than the final invoice for Seller's performance, a line item deduction of ten percent (10%) of the invoice amount as lien retainage to be withheld by Buyer; and each invoice must be sent to either of the following:
 - (1) Email: 4020gen@ineos.com
 - (2) Fax No.: (281) 535-4411
 - (b) If Buyer has a bona fide dispute concerning any portion of an invoice, then Buyer must notify Seller in writing of such disputed item(s).
 - (1) Upon receipt of notice concerning any disputed invoice item(s), the Parties will work together, in good faith, to promptly resolve the disputed amount and to mutually agree on which portions, if any, of the amount are rightly owed Seller.
 - (2) Upon determination that any of the disputed and unpaid amounts are rightly owed Seller, Buyer will promptly remit same.
 - (c) Buyer may set off any loss, damage, liability, or claim that Buyer may have against Seller against any performance or payment due Seller under the Agreement or any other contract or order with Seller.
 - (d) Inquiries concerning the status of any payment or other payment-related inquiries should be directed to either of the following:
 - (i) Email: claudia.walsh@ineos.com
 - (ii) Phone: (281) 535-6823
 - (e) No earlier than thirty (30) days following full and final completion of its performance under the Agreement or, if applicable, any purchase order issued pursuant to the Agreement, Seller will issue a final invoice for payment of lien retainage withheld by Buyer, for which payment will be made in accordance with Section 8(a) herein.
9. Bills and Liens.

- (a) Buyer will withhold as retainage ten percent (10%) of the amount of each invoice payable to Seller during the progress of Seller's performance under the Agreement or, if applicable, any purchase order issued pursuant to the Agreement.
- (b) Seller will pay promptly all indebtedness for labor, materials, tools, and equipment used in the performance of the Agreement and Seller may be required to provide evidence satisfactory to Buyer of the full payment of such indebtedness before Seller will be entitled to receive payment.
- (c) **To the fullest extent permitted by applicable law, Seller will not allow any mechanic's, contractor's, materialman's, or other liens to encumber Buyer's real or personal property by virtue of any work, labor, service, or material performed or provided by Seller Group (as defined herein) and Seller will release and defend, indemnify, and save harmless Buyer Group (as defined herein) from and against all Claims (as defined herein) occurring or accruing from such liens or encumbrances, except to the extent caused by the negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or breach of contract of Buyer Group.**
- (d) Should any mechanic's, contractor's, materialman's, or other lien come to encumber Buyer's property as a result of services performed pursuant to the Agreement, Seller will promptly procure its release; further, in the absence of prompt action by Seller, Seller expressly authorizes Buyer to pay any such lien(s) from any payments due Seller.

10. Safety.

- (a) Seller and Seller's subcontractors, if subcontracting is permitted, will strictly abide by all of Buyer's site rules, policies, and procedures when at Buyer's site(s), including, without limitation, the *Life Saving Rules* of Buyer set forth in Section 10(b) herein; it is Seller's obligation to obtain and maintain a copy of Buyer's site rules, policies, and procedures, which may be amended, altered, or revised from time to time at Buyer's sole discretion.
- (b) *Life Saving Rules:*
 - No consumption or being under the influence of alcohol or drugs
 - No smoking outside dedicated areas
 - No work on live equipment/machines to commence without proper authorization
 - Safety critical devices/interlocks shall not be disabled or overridden without authorization
 - Persons working at height must use proper fall protection
 - No entry to confined space without proper authorization and gas test
 - No person to enter a defined danger zone where objects can fall without proper authorization

(hereinafter, individually, "*Life Saving Rule*").
- (c) Seller and Seller's subcontractors, if subcontracting is permitted, will abide by and will comply fully with all governmental safety and health requirements, including but not limited to the rules and standards established by the Occupational Safety and Health Act of 1970, as amended, and any other applicable federal, state, and/or local safety or health laws, rules, or regulations, and will provide Buyer a copy of all accident reports related to performance pursuant to the Agreement, including, but not limited to, all OSHA (Occupational Safety and Health Administration) illness and injury reports.
- (d) Seller acknowledges and agrees any equipment provided by Buyer to Seller for the benefit of Seller's employees or those of its subcontractors, if subcontracting is permitted, will be provided on an "As Is" basis with no warranty of performance and at the sole risk and liability of Seller and it is Seller's sole responsibility to inspect and ensure such equipment is fit for the use intended and in proper working order.

11. Personnel.

- (a) Seller will provide, and if subcontracting is permitted, will cause its subcontractor(s) to provide, only qualified, competent, and orderly personnel at Buyer's premises; if so permitted, Seller will provide Buyer a complete list of subcontractors and subcontractor employees to be used in the performance of the Agreement prior to the performance of any service utilizing same.
- (b) Seller must afford Buyer reasonable time to review Seller's proposed list of subcontractors and subcontractor employees, if subcontracting is permitted, and Buyer must respond within a reasonable time concerning any objections thereto.
- (c) If for any reason whatsoever, Buyer believes any of Seller's personnel are, or its subcontractor's personnel are, in Buyer's sole opinion, objectionable or disorderly at Buyer's premises, then upon receipt of Buyer's complaint, Seller will immediately remove such personnel from Buyer's premises and such personnel will not be allowed to return to Buyer's premises without Buyer's prior written consent.
- (d) The Parties acknowledge and agree (i) that Buyer will suffer significant reputational damage and loss of goodwill in the event of a violation of a Life Saving Rule by Seller Group (as defined herein), (ii) that the actual damages that might be sustained by Buyer by reason of such a violation are uncertain and would be difficult to ascertain, and (iii) that 2.5% of the contract price, subject to a minimum of \$12,500.00 and a maximum of \$25,000.00, would be reasonable compensation for each such violation; therefore, Buyer acknowledges and agrees to accept, and Seller acknowledges and agrees to pay, the amount in clause (iii) of this Section 11(d) as liquidated damages, and not as a penalty, and such liquidated damages will constitute sufficient remedy for each such violation of a Life Saving Rule by Seller Group.

12. Use of Premises.

- (a) Seller acknowledges it has examined and is familiar with the premises on which services are to be performed and/or goods are to be delivered pursuant to the Agreement and knows the location of such activities, the areas that will be assigned for use, the configuration of the ground, the difficulties and potential hazards attending the execution or performance of such activities, the general and local labor conditions, and all other matters in any way affecting the execution, performance, or safety of such activities.
- (b) Seller will perform services and/or deliver goods pursuant to the Agreement in such a manner so as to cause minimal interference with Buyer's operations and the operations of other contractors on Buyer's premises.
- (c) Upon completion of performance of services and/or delivery of goods pursuant to the Agreement, Seller will restore Buyer's premises to its original condition and leave the premises clean and free of all tools, equipment, waste materials, and rubbish.
- (d) Seller will comply with all federal, state, and local environmental laws and regulations and will be liable for any environmental damage caused by Seller, including, without limitation, cleanup cost to properly dispose of hazardous substances or waste.

13. Warranties.

- (a) **Seller warrants and represents services performed and/or goods sold pursuant to the Agreement will conform to (i) the agreed specifications and (ii) any and all applicable laws.**
- (b) **Seller further warrants and represents it possesses good title to and the right to transfer goods sold pursuant to the Agreement and same will be free and clear of all taxes, liens, restrictions, reservations, security interests, or other encumbrances whatsoever.**
- (c) **Seller further warrants and represents it possesses the requisite supervisory, qualified, trained, skilled, and experienced personnel, as well as the applicable tools, equipment, supplies, and materials, as may be necessary to provide the services performed and/or goods sold pursuant to the Agreement in a safe, efficient, and competent manner.**

- (d) In the event Seller and/or its personnel or subcontractors, if subcontracting is permitted, are required to be licensed or certified under any applicable laws, regulations, or industry practices as a condition to providing the services performed and/or goods sold pursuant to the Agreement, Seller further warrants and represents all such licenses or certificates have been obtained and are in full force and effect.
- (e) Seller further warrants and represents the services performed and/or goods sold pursuant to the Agreement will be provided in a good and workmanlike manner, in full compliance with the requirements of the Agreement, and free from any and all defects due to poor workmanship or the result of negligence, accident, or willful neglect of Seller or its employees, subcontractors, if subcontracting is permitted, or agents.
- (f) Seller further warrants and represents services performed and/or goods sold pursuant to the Agreement will not infringe any patent, trademark, copyright, or other intellectual property right or the like.
- (g) Except as specifically provided in this Section 13, Seller makes no other warranties, express or implied, including, but not limited to, any warranty of merchantability or fitness for a particular purpose.

14. Audit.

- (a) Upon request, Buyer may audit any and all records of Seller and any subcontractor, if subcontracting is permitted, relating to services performed pursuant to the Agreement.
- (b) Seller will maintain its books and records relating to services performed pursuant to the Agreement for a period of two (2) years from the date a transaction was completed and Seller will grant Buyer reasonable access to such books and records within the aforementioned two-year period.

15. Notice.

- (a) Notices and other communications required or permitted under the Agreement will be in writing and addressed to the addressee set forth on Buyer's purchase order or agreement, or at such other address as a Party may designate in writing from time to time.
- (b) Notices and other communications required or permitted under the Agreement will be deemed given only if (i) delivered personally, (ii) mailed by first-class, certified or registered U.S. mail, return receipt requested, postage prepaid, (iii) sent by courier service, or (iv) via such other means as may be specified in writing and signed by an authorized representative of each Party.
- (c) Notices and other communications required or permitted under the Agreement will be deemed received on the business day on which such notice or communication was received; provided, however, any notice or communication received on a non-business day or after 5:00 P.M. local time will be deemed received the next business day.

16. Insurance.

- (a) Seller will provide and maintain in full force and effect, at all times during the Agreement, the following minimum insurance, occurrence policy required, unless otherwise unavailable, and, if subcontracting is permitted, Seller will require its subcontractor(s) to maintain similar insurance coverage:
 - (i) Workers' Compensation Statutory Requirements
 - (ii) Employers' Liability \$1,000,000.00
 - (iii) General Liability, including Commercial General Liability –
 - Each Occurrence \$2,000,000.00
 - General Aggregate \$5,000,000.00
 - (iv) Automobile Liability – Combined Single Limit \$1,000,000.00
 - (v) Umbrella Liability of \$5,000,000.00 Each Occurrence and Aggregate
- (b) Upon request, Seller will provide Buyer a Certificate of Insurance or Memorandum of Insurance completed by Seller's insurance carrier certifying the insurance coverages in Section 16(a) herein are in effect and requiring the insurance carrier to notify Buyer in writing at least thirty (30) days prior to any expiration or termination of, or material change to, the policies.
- (c) For clauses (iii), (iv), and (v) of Section 16(a) herein, (i) Buyer Group (as defined herein) will be designated an additional insured, (ii) Seller's insurance will be primary to any Buyer insurance or self-retention, and (iii) each policy will be endorsed to waive subrogation against Buyer Group.
- (d) Requirements for insurance as specified in the Agreement are separate and independent obligations of Seller and will not in any manner limit or qualify the other liabilities and obligations assumed by Seller under the Agreement.
- (e) Buyer's approval of insurance coverage will not in any manner limit or qualify the liabilities and obligations assumed by Seller under the Agreement.

17. Indemnification.

- (a) For purposes of the Agreement, "Buyer Group" means Buyer, its Affiliates, and its and their directors, officers, employees, and agents.
- (b) For purposes of the Agreement, "Seller Group" means Seller and its directors, officers, employees, subcontractors, if subcontracting is permitted, and agents.
- (c) For purposes of the Agreement, "Claims" means all suits, actions, losses, damages, claims, or liability of any character, type, or description, including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees.
- (d) **To the fullest extent permitted by applicable law, Seller will release and defend, indemnify, and save harmless Buyer Group from and against all Claims for injury or death to, or disease of, any employee of a member of Seller Group arising out of, or occasioned by, the acts or omissions of Seller Group in the execution or performance of the Agreement; it is the expressed intent of the Parties that the indemnity provided in this Section 17(d) is an indemnity extended by Seller to indemnify and protect Buyer Group from the consequences of Buyer Group's own sole, joint, or concurrent negligence, whether or not such negligence is the sole or contributory cause of the resultant injury, death, or disease.**
- (e) **To the fullest extent permitted by applicable law, Seller will release and defend, indemnify, and save harmless Buyer Group from and against all Claims for injury or death to, or disease of, any third party to the extent arising out of, or occasioned by, the acts or omissions of Seller Group in the execution or performance of the Agreement.**
- (f) **To the fullest extent permitted by applicable law, Seller will release and defend, indemnify, and save harmless Buyer Group from and against all Claims for damage to any property, including, but not limited to, environmental contamination, received or sustained by any person or property, to the extent arising out of, or occasioned by, the acts or omissions of Seller Group in the execution or performance of the Agreement.**
- (g) **To the fullest extent permitted by applicable law, Seller will release and defend, indemnify, and save harmless Buyer Group from and against all Claims resulting from or arising out of infringement or alleged infringement of any patent, trademark, copyright, or other intellectual property right due to services performed and/or goods sold pursuant to the Agreement, or due to the possession, manufacture, use, or sale of any method, structure, apparatus, material, or other object or documentation provided by Seller Group pursuant to the Agreement.**
- (h) Any provision to the contrary in the Agreement notwithstanding, the indemnities provided in Sections 9(c), 17(e), 17(f), and 17(g) herein will not apply to the extent Claims have been adjudicated as caused by the negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or breach of contract of Buyer Group.

- (i) **To effectuate the indemnity obligations in Sections 9(c), 17(d), 17(e), 17(f), and 17(g) herein, the indemnitee must (i) provide the indemnitor prompt written notice of the claim, (ii) accede control and direction of the investigation, preparation, defense, and settlement of the claim to the indemnitor, and (iii) reasonably cooperate with the indemnitor in such defense and settlement of the claim.**
- (j) **Section 17(i) herein notwithstanding, (i) an indemnitee may participate, at its sole cost and expense, in the defense of any indemnified claim and (ii) the indemnitor will not settle any indemnified claim that would not result in a complete and final release of the indemnitee or would require the indemnitee to admit liability or be subject to any equitable remedy, without the prior written consent of the indemnitee.**
18. **Limitation of Liability.** In no event will Buyer be liable to Seller for lost profits of any nature or for any consequential, incidental, indirect, special, exemplary, or punitive damages arising out of, or related to, the Agreement, whether based on contract, warranty, negligence, strict liability, or otherwise.
19. **Force Majeure.**
- (a) For purposes of the Agreement, “Force Majeure” means any cause not within the reasonable control of the Party claiming suspension of performance and which by the exercise of due diligence such Party could not have prevented, including, but not limited to, physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes resulting in evacuation, floods, washouts, explosions, machinery malfunctions or breakdowns, inability to obtain fuel, power, or materials necessary for production, deficient transportation, power outages, strikes, lockouts, or other industrial disturbances, pandemics or epidemics, acts of a public enemy, sabotage, vandalism and/or malicious mischief, wars, blockades, insurrections, riots, acts of terror, and compliance with any law, order, rule, or regulation of any governmental authority; for avoidance of doubt, a change of economic, monetary, or fiscal circumstances rendering the Agreement uneconomic for a Party will not in and of itself constitute Force Majeure.
- (a) Neither Party will be liable to the other Party if rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of the Agreement for so long as the event of Force Majeure exists and to the extent performance is delayed or prevented by the event of Force Majeure; provided, however, the Party unable to perform will use commercially reasonable efforts to avoid or remove the event of Force Majeure.
- (c) When performance has been prevented or delayed by an event of Force Majeure, the degree of services and/or quantity of goods affected will be deducted from the amount required to be supplied or purchased under the Agreement, as the case may be, with no obligation to make up such services or goods.
- (d) During the period a Party’s performance has been suspended in whole or part by reason of an event of Force Majeure, the other Party may likewise suspend the performance of all or part of its obligations to the extent such suspension is commercially reasonable, except for any payment and indemnification obligations.
- (e) The Party rendered unable to perform will provide notice to the other Party within a reasonable time after learning of the occurrence of a Force Majeure event; such notice will state the nature and extent of the Force Majeure condition claimed, the expected duration of the Force Majeure event, and the degree of services and/or quantity of goods affected.
- (f) The suspension of performance afforded by this Section 19 (i) will not apply until requisite notice in accordance with Section 19(e) herein is given, (ii) will not be available to a Party failing to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with reasonable dispatch, and (iii) will not relieve Buyer of the obligation to pay (a) for services performed or (b) for goods, title to which has transferred to Buyer, prior to the aforementioned notice.
- (g) The requirement that any Force Majeure be remedied with reasonable dispatch will not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties.
- (h) The Party rendered unable to perform will apportion its available supply or its purchases, as the case may be, fairly, including among its Affiliates and own units, departments, and divisions under common ownership, without incurring liability for failure to perform.
20. **Survivability.** The provisions of the Agreement which, by the nature of their content, are intended, expressly or impliedly, to continue and have effect regardless of the termination of the Agreement whether by default or otherwise, will survive and continue to bind the Parties, including, but not limited to, Sections 9(c), 17, and 18 herein.
21. **Confidentiality.** The Parties acknowledge and agree the Agreement and all information and data exchanged by the Parties in accordance with the Agreement will be maintained in strict and absolute confidence, except to the extent disclosure is necessary to perform a Party’s obligations or as required by law.
22. **Assignment.**
- (a) The Agreement will not be assignable or transferable by Seller without the prior written consent of Buyer, which consent will not be unreasonably withheld, conditioned, or delayed, and any attempted assignment or transfer without such consent will be void.
- (b) All covenants and provisions of the Agreement by and for the benefit of the Parties will bind and inure to the benefit of their respective successors and assigns as permitted by the provisions of this Section 22.
23. **No Third-party Beneficiaries.** The Agreement is intended solely for the benefit of the Parties and their permitted assigns and will not impart rights enforceable by any other person or entity, except as expressly provided in the Agreement.
24. **Construction and Interpretation.** The Parties acknowledge and agree that each has had adequate time to review all provisions of the Agreement with their own legal counsel and that the Agreement was not prepared by either Party to the exclusion of the other Party and as such, the Agreement will not be construed against either Party by reason of its preparation.
25. **Non-waiver.**
- (a) No waiver by either Party of one or more defaults by the other Party in the performance of any provisions of the Agreement will operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
- (b) No indulgence, leniency, or extension of time granted by either Party to the other Party will operate or be construed as an estoppel against the granting Party.
26. **Severability.** The invalidity or unenforceability of any particular provision of the Agreement will not affect the other provisions hereof, and the Agreement will be construed in all respects as if such invalid or unenforceable provision was omitted; in particular, in the event that the indemnity obligations in Sections 9(c) and 17 herein are deemed violative of TEX. INS. CODE § 151.102, or the insurance provisions of Section 16 herein are deemed violative of TEX. INS. CODE § 151.104, and neither an exception under TEX. INS. CODE § 151.103, nor an exception/exclusion under TEX. INS. CODE § 151.104(b), nor an exclusion under TEX. INS. CODE § 151.105 applies, then such indemnity obligations will be void and unenforceable only to the extent Claims are caused by the negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or breach of contract of Buyer Group and such insurance provisions will be severed and construed in accordance with this Section 26.

27. Headings. The titles and headings in the Agreement have been included solely for ease of reference and will not be considered in the interpretation or construction of the Agreement.
28. Conspicuousness. The Parties acknowledge and agree all provisions of the Agreement comply with any and all requirements of conspicuousness under the laws of the State of Texas.
29. Counterparts. The Agreement may be executed and delivered in the original, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.
30. Compliance.
- (a) The Parties acknowledge and agree that in the performance of the Agreement, each will comply with the Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1, et seq., and all other applicable law concerning anti-bribery and anti-corruption,
 - (b) Seller has neither offered, nor received, any commissions, payments, gifts, kickbacks, lavish or extensive entertainment, or other forms of illicit value in connection with the Agreement and acknowledges the giving or receiving of any such payments, gifts, entertainment, or other forms of illicit value is strictly in violation of Buyer's corporate policy and may result in the cancellation of this and all future contracts; Seller will notify Buyer's security department of any aforementioned solicitation by any of Buyer's employees or agents.
 - (c) Seller acknowledges and agrees it will maintain, and abide by, a *Code of Conduct* or similar policy comparable in substance to the *INEOS Supplier Code of Conduct* posted at www.ineos.com/sustainability/governance/supplier-code-of-conduct.
31. Jurisdiction; Venue.
- (a) The Agreement will be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction.
 - (b) The rights and obligations of the Parties arising from the Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, application of which is expressly excluded pursuant to Article 6 thereof.
 - (c) Any suit, action, or proceeding relating to or arising from the Agreement must be brought exclusively in the state or federal courts of Harris County, Texas, and each Party waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of such suit, action, or proceeding in such court or that any such suit, action, or proceeding which is brought in such court has been brought in an inconvenient forum.
 - (d) **Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury with respect to any action, claim, or proceeding arising out of or in any way relating to the Agreement or the transactions contemplated under the Agreement.**
32. Dispute Resolution.
- (a) With respect to any claims, counterclaims, demands, causes of action, disputes, controversies, and other matters in question involving the Parties and arising out of or relating to the Agreement, including any questions concerning its existence, validity, or termination, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of the Agreement or the relationship between the Parties created by the Agreement, and not resolved in the ordinary course of business (hereinafter "Dispute"), a Party must initiate the dispute resolution procedures set forth in this Section 32(a).
 - (1) A Party desiring to initiate dispute resolution must provide written notice of the Dispute to the other Party (hereinafter "Dispute Notice").
 - (2) The Dispute Notice will include (i) a statement of the issuing Party's position and a summary of arguments supporting that position, and (ii) the name(s) and title(s) of the executive(s) who will represent such Party in the negotiations and of any other person who will accompany the executive.
 - (3) Executives appointed to represent the Parties pursuant to any Dispute Notice must have the authority to settle the controversy and must be of a level of management higher than those directly involved in the Dispute.
 - (4) If one Party has issued a Dispute Notice, then the other Party will likewise promptly issue (i) a statement of its position and a summary of arguments supporting that position, and (ii) the name(s) and title(s) of the executive(s) who will represent such Party in the negotiations and of any other person who will accompany the executive(s); thereafter, the Parties will promptly attempt in good faith to resolve the Dispute by negotiations between the executives so appointed.
 - (b) Should a Dispute fail to be resolved pursuant to Section 32(a) herein within thirty (30) days of receipt of the Dispute Notice, either Party may seek whatever remedies available at law or in equity subject to the limitations in Section 31 herein and in the event of litigation, the prevailing Party will be entitled to all costs and expenses associated therewith, including attorneys' fees.
33. Time of the Essence. The Parties acknowledge and agree time is of the essence in the performance of the Agreement.