

1.0 AGREEMENT TO SUPPLY GOODS AND/OR PERFORM SERVICES

- 1.1 Subject to clause 1.4, in consideration of payment of the Price by Tronox, the Contractor must supply the Goods to Tronox and/or perform the Services in accordance with, and as specified in, this Agreement.
- 1.2 Subject to clause 1.4, any terms and conditions contained in any documents other than this Agreement in respect of the Goods and/or Services, including those supplied with the Goods or Services, are of no legal effect (even if any representative of Tronox signs those terms and conditions or annexes the terms and conditions to the Order).
- 1.3 Subject to clause 1.4, by indicating acceptance of these Tronox Order Terms and Conditions, either electronically, in writing or by conduct or performance, the Contractor agrees to be bound by these Terms and Conditions in relation to the Order.
- 1.4 Notwithstanding clauses 1.1 to 1.3, Tronox may agree that an alternative set of terms and conditions (**Alternative Terms and Conditions**) will apply to the supply of Goods and/or performance of Services instead of those set out in this Agreement, provided always that any such agreement must be in writing and
- attach the Alternative Terms and Conditions;
 - clearly express:
 - the Goods and/or Services to which the Alternative Terms and Conditions will apply; and
 - the term for which the Alternative Terms and Conditions will apply; and
 - be signed by either the Manager Commercial Services or the NOPS Supply Chain Manager.

2.0 CONTRACTOR'S OBLIGATIONS

- 2.1 In supplying the Goods and/or performing the Services, the Contractor must:
- not interfere with Tronox's activities or the activities of any other person at the Delivery Point and/or on the Site;
 - comply with all applicable Laws;
 - perform all activities on the Site in a safe manner and with due care and skill;
 - comply with all lawful directions of Tronox's personnel in and around the Site and all policies and procedures of Tronox which Tronox makes available to the Contractor from time to time;
 - ensure that the Contractor is, and that the Contractor's employees, agents and contractors are, properly qualified for, and skilled in, the performance of their tasks;
 - at Tronox's request, provide any documentation as to the results of quality testing and certification in relation to the Goods and any other information or documentation in relation to the Goods and/or Services reasonably requested by Tronox;
 - ensure that any information, documentation, results of quality testing and certification provided to Tronox, either under clause 2.1(f) or otherwise, are accurate, valid and in good order; and
 - take all reasonable measures to ensure that its employees, agents and contractors comply with the requirements set out in clauses 2.1(a) to (g).
- 2.2 If the Contractor is in breach of its obligations under clause 2.1(d) or otherwise puts the safety of any person (including themselves) at risk, Tronox may immediately remove the Contractor from the Site and prevent the Contractor from further accessing the Site, without prejudice to any other rights Tronox may have against the Contractor under this Agreement or otherwise.
- 2.3 Tronox will not be responsible for any losses suffered or expenses incurred by the Contractor as a consequence of the exercise of Tronox's rights under clause 2.2, including in respect of any consequential breach of this Agreement by the Contractor.

3.0 PRICE

- 3.1 Tronox must pay the Contractor the Price for the Goods and/or Services in accordance with clause 6.0.
- 3.2 The Price is inclusive of all costs incurred by the Contractor in the supply of the Goods and/or performance of the Services, including all charges for packaging, insurance, loading, delivery, quality testing, preparation of documentation and provision of certification, unless otherwise stated in the Order.
- 3.3 The Price is inclusive of all taxes and duties, except GST.
- 3.4 Unless explicitly stated in the Order, the Price is fixed and is not subject to change for any reason, including any changes due to:
- rise and fall adjustments (including any changes in the Australian Consumer Price Index); or
 - exchange rate fluctuations.

4.0 DELIVERY AND PERFORMANCE

- 4.1 The Contractor must:
- deliver the Goods to the Delivery Point by the Delivery Date; and/or
 - perform the Services by the Completion Date.
- 4.2 The Contractor must:
- ensure that all Goods are suitably packed (to avoid damage in transit or storage) and clearly labelled as to the contents, destination and Order number relevant to each package;
 - strictly comply with any direction given to it by Tronox in relation to the manner of delivery of the Goods and/or performance of the Services; and
 - provide Tronox with all information and documentation in relation to any warranties given by a third party supplier in connection with the Goods and/or Services;
 - where the Services to be performed involve the repair and/or maintenance of Tronox's equipment:
 - supply Tronox with detailed information about the repairs and/or maintenance carried out and the parts replaced; and
 - complete any worksheets and/or test certificates that Tronox requires.

5.0 TITLE

- 5.1 The Contractor warrants that it is the legal and beneficial owner of the Goods and that the Goods are free from any encumbrances, liens or any other claims by third parties whatsoever (including any claim for infringement of any intellectual property rights in either Australia or other countries).
- 5.2 If the Contractor is required to supply Goods under this Agreement, the title in the Goods (including any packaging) does not pass to Tronox until:
- where the Price is paid by Tronox before delivery, on payment of the Price; or
 - otherwise, on delivery.
- 5.3 In all circumstances, risk in the Goods and in any works created pursuant to this Agreement passes upon Tronox accepting the Goods following their delivery in accordance with this Agreement, unless Tronox repossesses any property under clause 9.4, in which case risk in any Goods that are repossessed will pass upon repossession by Tronox.

6.0 INVOICE AND PAYMENT

- 6.1 The Contractor:
- may provide Tronox with a Tax Invoice at the end of each month during which the Goods were delivered and/or the Services were performed, for all Goods delivered or Services performed during that month; and
 - must provide Tronox with a Tax Invoice on or before the Delivery Date or Completion Date (as applicable), for all Goods delivered or Services performed that have not been previously invoiced.
- 6.2 All Tax Invoices must state the relevant Order number.
- 6.3 Provided that the Contractor has complied with clauses 6.1 and 6.2, Tronox will pay each Tax Invoice provided by the Contractor within 30 days from the end of the month in which the relevant Tax Invoice is provided or as otherwise stipulated in the Order.
- 6.4 Tronox may reduce any payment due to the Contractor under this Agreement by any amount which the Contractor must pay to Tronox, including costs, charges, damages and expenses and any debts owed by the Contractor to Tronox on any account whatsoever. This does not limit Tronox's right to recover those amounts in other ways.

7.0 QUALITY

- 7.1 The Goods and/or Services must:
- match the description referred to in the Order;
 - be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose Tronox has made known to the Contractor; and
 - be of merchantable quality and, unless otherwise specified in the Order, must be new.
- 7.2 Without limiting any other provision of this Agreement, if the Contractor gave Tronox a sample of the Goods or a demonstration of the Services, the Goods and/or Services must, as a minimum, be of the same nature and quality as the sample or demonstration given.
- 7.3 In addition to clause 7.1, to the extent the Services to be performed involve the repair and/or maintenance of Tronox's equipment, the Contractor must perform the Services such that:
- the equipment is of "as new" quality, subject to a reasonable allowance for the age or usage of the equipment or any part of it;
 - the equipment is free from any defects in design, materials or workmanship;
 - the equipment is in good working order and condition;
 - any components or parts replaced in the equipment are of merchantable quality and, unless otherwise specified in the Order, are new;
 - the equipment is fit for the use and purpose intended; and
 - the equipment complies with all relevant codes and standards in Australia.

8.0 WARRANTY PERIOD AND DEFECTS

- 8.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, Tronox may, at its sole discretion:
- return the Defective Goods to the Contractor and/or reject the Defective Services; or
 - require the Contractor to repair or make good the Defective Goods and/or re-perform or make good the Defective Services within a reasonable time frame, or as otherwise specified by Tronox; or
 - at the Contractor's expense, repair or make good the Defective Goods and/or re-perform or make good the Defective Services, or cause others to do such work.
- 8.2 If Tronox returns any Defective Goods or rejects any Defective Services, Tronox will not be liable to pay the Price in respect of those Defective Goods and/or Services and will be entitled to a refund from the Contractor of any part of the Price which has already been paid, without prejudice to any other rights Tronox may have against the Contractor under this Agreement or otherwise.
- 8.3 If Tronox repairs, re-performs or makes good any Defective Goods and/or Services, the Contractor must reimburse Tronox for the cost of that repair, re-performance or making good within 7 days of receipt of a notice from Tronox setting out the amount owing.
- 8.4 Any warranty given by a third party supplier in relation to the Goods and/or Services shall not relieve the Contractor from its obligations under this clause 8 and will be provided to Tronox (as required by clause 4.2(c)) in addition to Tronox's rights under this clause 8.
- 8.5 Tronox may at any time, either at the Site or the Contractor's premises, inspect and test the Goods and/or Services to ensure the Contractor's compliance with this Agreement and the Contractor must provide all necessary assistance. Nothing in the clause 8.5 relieves the Contractor from any of its obligations under this Agreement.

9.0 TERMINATION AND FORCE MAJEURE

- 9.1 Tronox may terminate this Agreement:
- if the Goods and/or Services include one or more items and/or services that are (at Tronox's sole discretion) critical to Tronox's business, by 1 day prior notice to the Contractor; and
 - otherwise, at any time and in its sole discretion by 7 days prior notice to the Contractor.
- 9.2 Tronox may terminate this Agreement (without prejudice to any rights that Tronox may have under this Agreement or otherwise):
- if the Contractor becomes, or is deemed to become, insolvent or if insolvency, receivership or bankruptcy proceedings are commenced in respect of the Contractor - immediately upon notice to the Contractor;
 - if the Contractor's performance of its obligations under this Agreement is affected by an Event of Force Majeure for a period of 14 days or more - immediately upon notice to the Contractor; and
 - if the Contractor is in breach of any of its obligations under this Agreement:
 - if the Goods and/or Services include one or more items and/or services that are (at Tronox's sole discretion) critical to Tronox's business - by 1 days prior notice to the Contractor; or

- otherwise - immediately upon such breach not being remedied within 7 days of the receipt of a notice from Tronox requesting the breach be remedied.
- 9.3 If this Agreement is terminated under clause 9.1, Tronox must reimburse the Contractor for the costs incurred in relation to the Goods and/or Services supplied by the Contractor as at the date of the notice given under that clause, provided that the amount payable by Tronox does not exceed the proportion of the Price that the Goods and/or Services supplied bears to the whole of the Goods and/or Services to be supplied under this Agreement.
- 9.4 Where the Contractor removes any of Tronox's property from the Site, the Contractor grants to Tronox an irrevocable licence to, in the case of termination of this Agreement, access any site or premises where the Contractor conducts its business for the purpose of repossessing that property.
- 9.5 If, as a result of an Event of Force Majeure, a Party becomes unable, wholly or in part, to perform any of its obligations under this Agreement, or is delayed in performing those obligations:
- the affected Party must immediately give notice to the other party setting out the full details of the Event of Force Majeure, the obligations affected and the estimated delay in those obligations being able to be performed;
 - the affected obligations will be suspended, but only in so far, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
 - the affected Party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure, to mitigate its effects and to minimise the delay, provided that this does not require the settlement of strikes or labour disputes on terms contrary to the reasonable wishes of the Party affected.
- 9.6 Clauses 9.3 and 9.4 shall survive any termination of this Agreement

10.0 INSURANCE

- 10.1 The Contractor must procure and maintain from reputable insurers during the term of this Agreement:
- all and any insurances that are reasonable in the circumstances;
 - where any contract of engineering work is required to be performed by the Contractor, professional liability insurance with a limit of liability of not less than \$10,000,000 in respect of the performance of the Services; and
 - all and any insurances that the Contractor is required to have by Law, and the Contractor must provide evidence, upon request from Tronox, of its compliance with this clause 10.1.
- 10.2 Without limiting clause 10.1, where the Contractor removes any of Tronox's property from Site, prior to such removal, the Contractor must arrange insurance with a reputable insurer for the full value of that property. This insurance must:
- be in the joint names of the Contractor and Tronox; and
 - remain in force at all times that the property is off the Site, and the Contractor must provide evidence, upon request from Tronox, of its compliance with this clause 10.2.

11.0 CONFIDENTIALITY

- 11.1 The Contractor must treat all information not publically available which the Contractor obtains in connection with this Agreement as confidential and must not disclose such information to any person without Tronox's prior written approval (except to the extent necessary to comply with its obligations under this Agreement).
- 11.2 This clause 11 survives any termination of this Agreement.

12.0 INTELLECTUAL PROPERTY

- 12.1 To the extent that any Intellectual Property Rights form any part of the Goods and/or Services, the Contractor must assign those rights to Tronox unless they include Intellectual Property Rights that were owned by the Contractor as at the date of this Agreement, in which case the Contractor grants to Tronox an absolute and irrevocable royalty-free licence to use, and unfettered right to assign, those Intellectual Property Rights.

13.0 GOODS AND SERVICES TAX

- 13.1 If: a) GST is imposed on any supply made by the Contractor under or in connection with this Agreement; and b) the Contractor has provided Tronox with a Tax Invoice in respect of that supply, the Contractor may recover from Tronox (in addition to the Price) an amount equal to the GST payable in respect of that supply.

14.0 MISCELLANEOUS

- 14.1 The Contractor will perform its obligations under this Agreement as an independent contractor and not as an agent, partner, representative or employee of Tronox.
- 14.2 This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings, negotiations and communications on that subject matter.
- 14.3 A provision of this Agreement or a right created under it may not be waived, assigned, sub-contracted or varied except in writing signed by the Party or Parties to be bound (including, in the case of variation, by way of a variation to the Order which is signed by both parties).
- 14.4 Notwithstanding any other clause in this Agreement, the Contractor agrees Tronox shall be entitled to novate the Agreement to a related body corporate of Tronox (**New Party**) at any time and the Contractor hereby consents to such novation. In this clause 14.4, the term "related body corporate" shall have the same meaning as that in section 50 of the Corporations Act 2001 (Cth). If Tronox proposes to effect such a novation, it will provide the Contractor with a deed of novation, under which Tronox is released from all liability under this Agreement and the New Party agrees to be bound by, and perform the obligations of Tronox under this Agreement (**Deed**). The Contractor agrees to execute the Deed within 10 Business Days of receiving the Deed and do all other things reasonably necessary to effect the novation of this Agreement to the New Party.
- 14.5 This Agreement is governed by the laws in force in Western Australia and the Parties submit to the exclusive jurisdiction of the courts of that place.
- 14.6 The Parties agree that the Sale of Goods (Vienna Convention) Act 1986 (WA) does not apply to this Agreement.
- 14.7 All amounts referred to in this Agreement (including the Order) are in Australian dollars unless stated otherwise.
- 14.8 Any notices given in accordance with this Agreement must be in writing and sent by email or post to the recipient's address as specified in the Order.
- 14.9 A notice sent by email is regarded as given and received when sent by the sender unless:
- the sender receives a report of delivery failure or delivery delay;
 - the sender receives an "Out of Office" reply or similar response; or
 - the recipient informs the sender that the notice is illegible, incomplete or corrupted within 4 hours of the notice being transmitted.
- 14.10 A notice delivered other than on a business day in the place of receipt or after 4.00pm (recipient's time) is to be regarded as being received at 9.00am on the following business day in the place of receipt and a notice delivered before 9.00am (recipient's time) is to be regarded as being received at 9.00am.
- 14.11 In this Agreement:
- the singular includes the plural and vice versa; and
 - the word "including" is not intended to be used as a word of limitation.

15.0 PUBLICITY AND PHOTOGRAPHS

- 15.1 No film or digital photographs of the Goods, Services or the Site shall be taken or used by the Contractor or any person engaged by the Contractor, including the Contractor's subcontractors, agents, consultants and suppliers, without prior written approval of Tronox. All negatives and prints of any photograph taken pursuant to Tronox's permission shall be the property of Tronox and shall be delivered to Tronox upon request.
- 15.2 Neither the Contractor nor any person engaged by the Contractor, including the Contractor's subcontractors, agents, consultants and suppliers, shall issue any press release or otherwise publicise the fact it is supplying Goods or performing Services for Tronox without prior written approval of Tronox. Any and all requests for comments, statements, interviews or any other information whatsoever in relation to Tronox, the Goods, Services or the Site received from the news media or other third parties shall be referred to Tronox for response and further handling and shall not otherwise be acted upon by Contractor.

16.0 DEFINITIONS

- 16.1 In this Agreement, unless the contrary intention appears:
- Agreement** means the agreement between the Parties comprising: (a) the Order, (b) any other documents referred to in the Order; and (c) these Tronox Order Terms and Conditions.
- Contractor** means the party to whom the Order is addressed.
- Completion Date** means the date identified as such in the Order.
- Defective** means Goods and/or Services (or any part of them) which are not in accordance with this Agreement or which are damaged, deficient, faulty, inadequate or incomplete.
- Delivery Date** means the date identified as such in the Order.
- Event of Force Majeure** means any cause outside the reasonable control of the affected Party (other than an obligation to pay money) and which could not have been prevented or avoided by that Party taking all reasonable steps.
- Goods** means:
- all goods (if any) described in the Order; and
 - any goods which are incorporated into, or supplied to Tronox as part of, any Services (including Services for the repair and/or maintenance of Tronox's equipment),
 - and includes any part of those goods.
- GST** has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Ch).
- Intellectual Property Rights** are all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know how, materials, documents, methods, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended and revised from time to time).
- Law** means:
- Commonwealth, State and local government legislation, including regulations, by-laws, orders, awards and proclamations;
 - common law and equity; and
 - requirements and guidelines of Government authorities, consents, certificates, licences, permits and approvals, and any conditions of the same.
- Parties** means Tronox and the Contractor and "Party" means one of them.
- Price** means the price specified in the Order.
- Order** means the order for Goods and/or Services issued by Tronox to the Contractor (whether the order is placed through a form, by facsimile or electronically).
- Services** means all the services (if any) described in the Order, which may include services for the repair and/or maintenance of Tronox's equipment and consultancy services, and includes any part of those services.
- Site** means any place which is occupied, operated, controlled or owned by Tronox.
- Tax Invoice** has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Ch).
- Tronox** means Tronox Management Pty Ltd (ACN 009 343 364).
- Warranty Period** means the period of 12 months commencing on the date of delivery of the Goods to the Delivery Point or the date of completion of the Services (as applicable), or such longer period as specified in the Order.