

Purchase Order Terms and Conditions

Wilmar Sugar Pty Ltd (ABN 44 081 051 792)
Wilmar BioEthanol (Australia) Pty Ltd (ABN 85 009 660 191)



(each referred to as Wilmar in this document)

1. Electronically Transmitted Purchase Order Documents	These Terms and Conditions apply to all Purchase Order Documents electronically transmitted by Wilmar to the Supplier except where otherwise stated in the Purchase Order Documents.
2. Definitions	<p>The following words, except where the context requires otherwise, have the following meanings:</p> <p>“Business Day” means a day on which trading banks are open for general banking business in Queensland, Australia excluding Saturdays, Sundays, or public holidays unless otherwise specified.</p> <p>“Consumer Protection Law” means the Competition and Consumer Act 2010 (Cth) and any applicable State or Territory legislation with provisions regarding conditions and warranties in consumer transactions.</p> <p>“Deliverables” means all products or services or products and services to be supplied by the Supplier to Wilmar as specified in a Purchase Order.</p> <p>“GST” has the same meaning as in the GST Legislation.</p> <p>“GST Legislation” means A New Tax System (Goods and Services Tax) Act 1999 or if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.</p> <p>“Purchase Order” means any electronic order by Wilmar to the Supplier to purchase Deliverables from the Supplier.</p> <p>“Purchase Order Documents” means the Purchase Order, these Terms and Conditions, any Agreement for the purchase of the Deliverables by Wilmar from the Supplier and all documents attached to the Purchase Order Documents or incorporated by reference into the Purchase Order Documents.</p> <p>“Related Body Corporate” has the meaning defined in the Corporations Act 2001.</p> <p>“Supplier” means the person, firm or corporation from whom the Deliverables are being purchased pursuant to a Purchase Order.</p> <p>“Tax Invoice” has the same meaning as in the GST Legislation.</p> <p>“Wilmar” means either Wilmar Sugar Pty Ltd ABN 44 081 051 792 or Wilmar BioEthanol (Australia) Pty Ltd ABN 85 009 660 191 or any Related Body Corporate, as stipulated on a Purchase Order.</p>
3. Contracts	<p>A Purchase Order, when properly given by a person with actual or ostensible authority and bearing an order number, is the only form which will be recognised by Wilmar as authority for charging Deliverables to its account with the Supplier and supersedes all previous communications and negotiations.</p> <p>The Purchase Order Documents constitute the entire agreement between Wilmar and the Supplier.</p> <p>No terms stated by the Supplier in responding to a request for proposal, providing a quote or accepting or acknowledging a Purchase Order will be binding upon Wilmar unless accepted in writing by Wilmar. The Supplier may not assign a Purchase Order</p>

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	without Wilmar's prior written consent. No waiver of a breach of any express or implied provision of a Purchase Order will constitute a waiver of any other breach of such provision or of any other express or implied provision.
4. Quantity	The quantity of Deliverables delivered must not be greater or less than the amount specified in a Purchase Order unless amended by Wilmar in writing.
5. Inspection in progress	The Supplier agrees that Wilmar or its designated agent will have the right of inspection of all work contained in the Purchase Order Documents at any time and during any stage of engineering, manufacture or installation. The Supplier will make this a condition of any sub-contracted work. Wilmar or its designated agent will have the power to reject any work performed or being performed that does not conform to the Purchase Order, whereupon the work rejected will be redone at no additional cost to Wilmar. Any such inspection or any lack of such inspection does not relieve the Supplier of any obligations contained in the Purchase Order Documents.
6. Engineering Data and data	The Supplier must furnish all engineering and other data required by Wilmar within the time stated in the Purchase Order Documents or if no time is stated, then as notified in writing to the Supplier by Wilmar.
7. Payment Terms	Unless otherwise agreed to in writing (which may appear elsewhere in the Purchase Order Documents) payments will be in accordance with Wilmar's standard payment terms of net 45 days from the end of the month in which the invoice issues. An invoice is deemed to issue on the day it is dated.
8. Invoices	<p>Invoices may only be rendered on or after delivery of the relevant Deliverables and must show the Purchase Order number, item number and the name of the site or other location to which the Deliverables were delivered or shipped and be accompanied by evidence of delivery and, where applicable, a Confirmation number (in accordance with clause 18(j)). If any sales tax, duty, excise or other similar tax or charge, for which Wilmar has not furnished or agreed to furnish an exemption certificate, is applicable to a Purchase Order, it must be stated separately on the invoice.</p> <p>Wilmar will not be obliged to pay GST in respect of any supply unless the Supplier first delivers to Wilmar a Tax Invoice in compliance with the GST Legislation and where such supply is a taxable supply as described in the GST Legislation.</p>
9. Contract Items	<p>If there is any conflict or inconsistency between the provisions of the Purchase Order Documents, the following order of precedence will be applied:</p> <ol style="list-style-type: none"> 1. The Purchase Order; 2. Any Agreement for the purchase of the Deliverables by Wilmar from the Supplier; 3. These Purchase Order Terms and Conditions.
10. Cancellation for Default	In the event of a breach by the Supplier of any of the terms of the Purchase Order Documents, including any of the Supplier's warranties, Wilmar may at its option and without prejudice to any of its other rights, cancel the Purchase Order with respect to any undelivered Deliverables and the Supplier will not be entitled to any compensation in respect of such cancellation.
11. Cancellation	<p>Wilmar may at its option cancel a Purchase Order, or any part of a Purchase Order, with respect to any undelivered Deliverables, and in such case unless clause 10 applies, the following provisions will apply.</p> <p>Upon cancellation, Wilmar's obligation will be to pay only for Deliverables delivered prior to the cancellation and accepted by Wilmar.</p> <p>Upon receipt of notice of cancellation, the Supplier must cease manufacture and supply of work to the extent not commenced, and to the extent commenced must immediately stop all further work and do everything possible to mitigate any cost incurred by it consequent upon such cancellation. In such case Wilmar will pay to the</p>

	Supplier any expenditure reasonably and justifiably incurred by the Supplier prior to date of cancellation and which has not been otherwise recouped by the Supplier.
12. Warranty	The Supplier warrants that the Deliverables will conform to its description in the Purchase Order Documents and any applicable specifications and will be of good and merchantable quality, free from defects in material and workmanship and fit for the purpose for which it is sold (if known to the Supplier) or for which such Deliverables are normally sold (in any other case). This warranty is in addition to and not to the exclusion of any warranty or service guarantee stated in the Purchase Order Documents or implied by law.
13. Intellectual Property	The Supplier warrants that the sale or use of the Deliverables will not infringe or contribute to the infringement of any patents, trademarks or copyrights in either Australia or any foreign country. The Supplier indemnifies Wilmar against any loss or damage (including solicitor's fees and other costs of defending an action) arising from breach of this warranty. This indemnity will continue notwithstanding any cancellation of a Purchase Order or termination of any or all of the Purchase Order Documents.
14. Supplier's Title	The Supplier warrants that the Deliverables are free and clear of all liens and encumbrances and that the Supplier has and will give Wilmar good title to it.
15. Property and Risk in Deliverables	<p>Subject to Wilmar's rights pursuant to clause 17:</p> <ul style="list-style-type: none"> a) Unless they have passed previously, property and risk in completed Deliverables will pass to Wilmar on delivery to the place specified in the Purchase Order Documents (Place for Delivery). b) Property in partly completed Deliverables and any materials and parts to be used in the manufacture of those Deliverables then on hand will pass to Wilmar on payment therefore.
16. Transportation and Delivery	<p>Wilmar's standard delivery terms are Free-In Store (FIS) or as specified in the Purchase Order Documents.</p> <p>All Deliverables must be packed, marked and transported as specified in the Purchase Order Documents but if not specified, then in a proper and suitable manner.</p> <p>All Deliverables must be accompanied by the necessary shipping documents (including, without limitation, any export licenses, certificates of origin or permits) and by a delivery note which precisely details the Deliverables and quotes the Purchase Order number and any other information that Wilmar requires and notifies to the Supplier.</p> <p>Wilmar and the Supplier will assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.</p>
17. Defective Deliverables	<p>All Deliverables received by Wilmar are received subject to Wilmar's right of inspection within a reasonable time after arrival at Place of Delivery. If upon inspection any Deliverables are found to be unsatisfactory, defective or of inferior quality or workmanship or fail to meet the specifications, warranties or any other requirements of the Purchase Order Documents (Defective Deliverables), Wilmar may return such Defective Deliverables to the Supplier at the Supplier's risk and expense. Wilmar may withhold payment for Defective Deliverables. Payment for Deliverables prior to inspection will not be construed to be an acceptance of Defective Deliverables. Upon return of any Defective Deliverables, the Supplier must reimburse Wilmar for:</p> <ul style="list-style-type: none"> a) Any amounts paid by Wilmar on account of the purchase price of the Defective Deliverables; and b) Any cost incurred by Wilmar in connection with the delivery or return of such Deliverables. <p>Without prejudice to any other remedy, Should Wilmar require the Supplier to dispatch Deliverables to replace any Defective Deliverables, the Supplier will do so within 24 hours of notification by Wilmar.</p>

18. Services or Work to be carried out	<p>The following conditions will also apply where the Supplier provides services and/or where the Purchase Order Documents require either specifically or by implication the presence of the Supplier or its employees, servants or agents on Wilmar's premises:</p> <ul style="list-style-type: none"> a) Wilmar relies on the Supplier's skill and the Supplier warrants that all work will be performed in a workmanlike manner. b) If any of the work or materials is found by Wilmar to be defective or not in compliance with the Purchase Order Documents and the Supplier on request of Wilmar fails to remedy any defect or default to the satisfaction of Wilmar the same may be remedied by Wilmar at the cost of the Supplier. c) The Supplier must supply all labour, tools, equipment and materials necessary to complete the work. d) The Supplier must use his best endeavours not to impede or interfere with other work in progress on Wilmar's premises. e) The Supplier, its employees, servants and agents enter Wilmar's premises at their own risk and will also be liable for and indemnify Wilmar against any loss, damage, claims or liability arising directly or indirectly out of the performance of the work or presence on Wilmar's premises, including claims against Wilmar whether alleging negligence of Wilmar or otherwise. f) The Supplier must at its own expense obtain all requisite licences and permits and comply with all laws and regulations in connection with the work or installation of the Deliverables. g) The Supplier, its employees, servants and agents and sub-contractors must comply with the work, health, safety and environment policies and regulations of Wilmar and with the reasonable directions and orders of Wilmar, its employees and authorised officers. h) The Supplier must not sub-contract or assign the work or any part of the work without Wilmar's prior written consent. i) The Supplier performs all work as an independent contractor and not as an agent or employee of Wilmar. The Supplier will, prior to commencement of work at Wilmar's premises, provide Wilmar with notification of the Supplier's Workers Compensation Registration Number. j) Upon completion of the services the Supplier must request written confirmation from Wilmar that all services have been undertaken and completed in accordance with the Purchase Order Documents (Confirmation). The Supplier's request must include relevant materials evidencing the completion of the services. Where Wilmar issues a Confirmation it will be issued with a Confirmation number.
19. Indemnity	<p>In addition to any other right conferred on Wilmar under the Purchase Order Documents or by law, the Supplier releases and indemnifies Wilmar against all loss, liability, damages, costs (including reasonable legal costs) and expenses incurred by Wilmar arising from any:</p> <ul style="list-style-type: none"> a) breach of the Purchase Order Documents by the Supplier; b) Defective Deliverables; c) personal injury to the employees, servants, agents or subcontractors of the Supplier; or d) damage to property caused by the Supplier's employees, servants, agents or subcontractors, <p>except to the extent that it is caused by Wilmar.</p> <p>This indemnity includes (without limitation) liability incurred under the Consumer Protection Law where any Deliverables supplied by Wilmar (whether directly or indirectly) to a consumer fail to comply with the guarantees contained in that legislation due to:</p> <ul style="list-style-type: none"> a) any defect in the Deliverables that are Deliverables supplied by the Supplier to Wilmar; or b) any representations (whether written or verbal) made by the Supplier or any of

	<p>its employees or agents in relation to the Deliverables that are Deliverables supplied (including any representations made on any packaging or Deliverables information and any representation as to the fitness for purpose of the Deliverables); or</p> <p>c) failure by the Supplier to provide any Deliverables information which should reasonably have been supplied to Wilmar.</p>
20. Insurances	<p>The Supplier must, immediately upon request by Wilmar, provide Wilmar with copies of its certificate of currency for the following insurances:</p> <ul style="list-style-type: none"> a) Product Liability; b) Public Liability; c) Professional Indemnity; d) Worker's Compensation; and e) Motor Vehicle.
21. Notice	<p>Form of Notice</p> <p>All notices given under a Purchase Order Document must be:</p> <ul style="list-style-type: none"> a) in legible writing, in English and addressed to the intended recipient; and b) signed by the sender (if an individual) or by an authorised representative of the sender; and c) given to the addressee by: <ul style="list-style-type: none"> (i) delivery in person; or (ii) post to, or leaving at, that party's address for service; or (iii) sending by fax to the party's address for service; or (iv) sending by email to the party's email address; and d) is regarded as being given by the sender and received by the addressee: <ul style="list-style-type: none"> (i) if by delivery in person or by being left at the party's address for service, upon delivery; (ii) if by post, two (2) Business Days from and including the date of posting by ordinary prepaid post in respect of an address for service within the Commonwealth of Australia and twenty one (21) Business Days in respect of any other address; or (iii) if by fax or email, when legibly received by the addressee, with receipt being evidenced by a report generated by the sender's machine confirming uninterrupted transmission / sending; <p>but if the delivery or receipt occurs on a day which is not a Business Day or at a time after 5.00 pm (both the day and time being in the place of receipt) it is regarded as having been received at 9.00am on the next following Business Day.</p> <p>Address for service</p> <ul style="list-style-type: none"> a) For the purposes of this clause 21, a party's address for service shall be the postal address, fax number or email address last notified by one party to the other. b) If the Party is a company, its address for service shall also include its registered office.
22. Waiver	<p>No waiver of any breach of, or failure to enforce any provision of, the Purchase Order Documents at any time by any party shall in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of the Purchase Order Documents.</p>
23. Invalidity	<p>If any term of the Purchase Order Documents is, or becomes, unenforceable, illegal or invalid for any reason, the relevant term is to be considered to be modified to the extent necessary to remedy the unenforceability, illegality or invalidity. If this is not possible, the provision is to be severed from the relevant Purchase Order Document,</p>



	without affecting the enforceability, legality or invalidity of any other term of the Purchase Order Document.
24. Governing law and jurisdiction	The Purchase Order Documents are governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.