

## PURCHASE ORDER TERMS AND CONDITIONS

- 1. Parties.** “TPS” means Tampa Port Services, LLC identified in the applicable TPS purchase order (the “Order”). “Supplier” means the person or entity supplying the goods or services under the Order. TPS and Supplier are each a “Party” and are collectively referred to as the “Parties.”
- 2. Agreement.** Supplier shall perform the services identified in the Order (the “Services”) and provide the goods and Services deliverables identified in the Order (the “Goods”). Unless the Goods and Services are being provided under a separate agreement signed and on file with TPS (a “Master Agreement”), the Parties’ “Agreement” means the following documents, listed in their order of priority in the event of a conflict: (a) the Order (including any designs and specifications (collectively the “Specifications”) provided by TPS to Supplier), and (b) these Purchase Order Terms and Conditions (these “Terms and Conditions”). If the Goods and Services are being provided under a Master Agreement, these Terms and Conditions do not apply.
- 3. Acceptance of Agreement.** Upon acceptance of the Order, acceptance of payment, shipment of a Good, commencement of a Service, or any other statement, act, or course of conduct of Supplier which constitutes acceptance under applicable law, whichever comes first (an “Act of Acceptance”), Supplier shall be bound by the Agreement. Supplier’s acceptance of TPS’s offer is expressly limited to the terms of TPS’s offer, as set forth in the Agreement. The terms of the Agreement prevail over any terms and conditions contained in any other documentation and expressly exclude any of Supplier’s terms and conditions or any other document issued by Supplier in connection with this Agreement.
- 4. Delivery of Goods and Performance of Services.** Supplier acknowledges that time is of the essence with respect to Supplier’s obligations under this Agreement and that prompt and timely performance of all such obligations, including all performance dates, timetables, project milestones, and other requirements is strictly required. Supplier shall advise TPS upon receipt of the Order if it cannot meet the specified completion date or delivery date. TPS in its sole discretion may designate any reasonable alternative completion or delivery points to expedite Supplier’s performance. Supplier may not change the completion date or delivery date stated in the Order except as provided in Section 40 of these Terms and Conditions. If no completion date or delivery date has been specified in the Order, Supplier shall fill the Order promptly and select the most expeditious method of delivery. Supplier shall package Goods to prevent damage during shipping. On any shipment not accompanied by a packing slip, TPS’s count shall be accepted as final. The Order, including all warranty work, shall be subject to expediting and Vendor Quality Surveillance (“VQS”) by TPS or its designated representative. Mosaic shall be afforded free access during regular working hours to Supplier’s plants, and Supplier agrees to procure a similar right for Mosaic, for expediting and VQS purposes with respect to subcontractors and other suppliers. As required by Mosaic, Supplier shall supply schedules, progress reports, bills of material, unpriced copies of Supplier’s sub-purchase orders and subcontracts for Mosaic’s use and any other documentation required by Mosaic for expediting and VQS. Supplier shall notify Mosaic in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause and corrective actions being taken. Slippage in Supplier’s schedule may be deemed as reasonable grounds for concern in which event Mosaic may demand in writing that Supplier take the necessary actions to ensure that Supplier will perform on time. Failure to do so shall qualify as a breach of a material obligation by Supplier.
- 5. Rejection of Nonconforming Goods and Services.** TPS’s payment for Goods and Services shall not constitute their acceptance. TPS shall have a reasonable time (but not less than thirty (30) days) after receipt, in the case of the Goods, or completion, in the case of the Services, to inspect the Goods tendered and Services completed by Supplier. TPS, at its sole option, may inspect all or a sample of the Goods and Services and may reject all or any portion of the Goods (“Nonconforming Goods”) or Services (“Nonconforming Services”) that do not strictly comply in every respect with the Agreement (collectively the “Nonconforming Goods or Services”). In addition to such other rights and remedies TPS may have by contract or by law or equity, at its sole discretion TPS may (a) rescind the Agreement in its entirety; (b) accept the Nonconforming Goods or Services at a reasonably reduced price; (c) reject and return or require Supplier to remove any Nonconforming Goods or Services at Supplier’s expense, and require Supplier at TPS’s sole discretion either to replace the Nonconforming Goods or Services with conforming Goods or Services or require from Supplier reimbursement for the Nonconforming Goods or Services. If TPS requires replacement of the Nonconforming Goods, or re-performance or correction of the Nonconforming Services, Supplier shall pay for all related expenses, including, but not limited to, in the case of Nonconforming Goods, transportation charges for their return and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods or re-perform Services, TPS may replace them with goods from a third party or have the Services re-performed by a third party, charge Supplier the cost thereof, and terminate this Agreement pursuant to Section 25 of these Terms and Conditions. Any inspection or other action by TPS under this Section shall not reduce or otherwise affect Supplier’s obligations under the Agreement, and TPS shall have the right to conduct further inspections in accordance with this Section 5 after Supplier has carried out its remedial actions.
- 6. Invoices.** Supplier shall invoice TPS for all Goods delivered and all Services performed as described in the Order. If the Order permits Supplier to invoice TPS for any shipping costs, or any “Taxes and Fees,” as defined in Section 8 below, Supplier’s invoice must state these separately. Supplier shall endeavor to provide Mosaic each invoice within fifteen (15) days after completion of the Services or delivery of Goods and must reference the Order, but in no event shall the invoice be submitted after ninety (90) days of completion of the Services or delivery of Goods. TPS reserves the right to return all incorrect invoices. The price stated in the Order includes all charges that TPS has agreed to pay in connection with the Goods and Services. TPS will have no obligation to pay Supplier for any other charges of any kind except as TPS has specifically agreed in writing. Supplier waives any lien rights relating to the performance of the Agreement, and final payment for Services shall not be due until Supplier has delivered to TPS a complete release of any and all liens arising out of the Services or receipts in full covering all labor, materials, and equipment for which a lien could be filed. Supplier shall maintain complete and accurate books, records, and accounts of all materials, services, and costs relating to this Agreement, in accordance with generally accepted accounting principles, for at least four (4) years after Supplier receives the final payment under the

Agreement. TPS reserves the right to audit Supplier's books, records, and accounts as necessary to confirm Supplier's compliance with the terms of this Agreement and to evaluate any claims submitted by Supplier or a third party.

**7. Payment Term.** Unless otherwise specified in the Order, TPS shall pay at its option either the invoiced amount less a two percent (2%) discount within fifteen (15) days after receipt of a correct invoice, or the invoiced amount within sixty (60) days after receipt of a correct invoice. TPS may deduct amounts due to Supplier for any setoff, counterclaim, or indemnification right arising out of the Order or any other agreement between the Parties. Payment is made when TPS's check is mailed or when TPS initiates electronic payment as described on the Order. Payment shall not constitute acceptance by TPS or a waiver of any of TPS's rights or remedies.

**8. Taxes and Fees.** Except as may be provided in the Order, Supplier shall be liable for and pay to the appropriate taxing authority all federal and state sales taxes and all other fees, taxes, dues, customs duties, tariffs, imposts, government imposed surcharges, or other like charges, if any, properly payable upon and in connection with Goods to be furnished and Services to be performed, and shall secure all permits, fees, and licenses necessary for the execution of any Services (collectively the "**Taxes and Fees**"). All personal property taxes assessable upon any Goods prior to receipt by TPS of Goods conforming to the Order shall be borne by Supplier.

**9. ISNetWorld.** If Supplier will be performing Services at a TPS facility, Supplier must maintain a current registration and updated company information with ISNetWorld, a third party provider. ISNetWorld assists TPS with supplier approval and on-going supplier management with special emphasis on safety management. Failure to comply with this provision will suspend this Agreement, and, if not cured within five (5) business days, will constitute a basis to terminate this Agreement pursuant to Section 26 of these Terms and Conditions.

**10. Risk of Loss.** Except as may be provided in the Order, Supplier assumes any and all risk of loss and damage to any Goods furnished hereunder until the Goods are physically delivered to TPS's facility specified in the Order.

**11. Warranties.** Supplier represents and warrants to TPS that Supplier has the right to perform the Services and that they will be performed in a safe, skillful, and workmanlike manner using personnel of required skill, experience, and qualifications in accordance with best industry standards for similar services; completed in accordance with the Specifications and any manufacturer's instructions; and of good quality and free from defects in workmanship, material, and design. Supplier represents and warrants to TPS that Supplier has title to and the right to convey the Goods, and that the Goods will be free from any defects in workmanship, material, and design; strictly conform to the Specifications and all samples furnished; be new, not used or refurbished; be fit for their intended purpose and operate as intended; be merchantable; and be free and clear of all liens, security interests, and other encumbrances. Where the Goods are subject to occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970, as amended ("**OSHA**"), or health or safety standards promulgated by the Mine Safety and Health Administration ("**MSHA**"), or their state equivalents, Supplier warrants that the Goods meet the applicable standards. Supplier represents and warrants that the Goods and Services do not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods or Services by TPS.

**12. Non-Exclusive.** Supplier acknowledges and agrees that this Agreement is a non-exclusive agreement, and TPS reserves the right to obtain the same or similar goods and services through TPS's own personnel or through other third parties. Similarly, nothing in this Agreement require Supplier to perform work solely for TPS.

**13. Compliance with Laws.** Supplier and its employees, officers, directors, agents, representatives, contractors, and subcontractors (collectively "Supplier's Personnel") shall comply with all applicable federal, state and local laws, codes, ordinances, rules, and regulations (collectively "Laws") including, without limitation, those concerning occupational health and safety, the Fair Labor Standards Act of 1938, wage and hour laws, anti-discrimination, -harassment and -retaliation laws, and environmental and pollution control and abatement requirements. Supplier shall furnish such evidence of compliance with these Laws as TPS may require at any time. Supplier shall immediately notify TPS of any release or threatened release relating to or arising from the Goods or Services of any substance, waste, or material regulated by any Laws. Notwithstanding anything herein to the contrary and without prejudice to any other remedy TPS may have, a violation of or failure to enforce any Laws by Supplier or any of Supplier's Personnel is cause for (1) immediate removal of Supplier and Supplier's Personnel from TPS's facilities and restrictions on future entry, and (2) immediate termination of this Agreement with no further obligation or liability of TPS to Supplier. Each Party agrees to comply with all applicable foreign or domestic anti-corruption and anti-bribery Laws, as in effect from time to time, including, but not limited to, the United States Foreign Corrupt Practices Act of 1977, as amended, and any Laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (collectively, "Anti-Corruption Laws"). Without limiting the generality of the foregoing, each Party agrees not to make, authorize, offer, or promise to make or give any money or any other thing of value, directly or indirectly, to any current or former government official, government employee (including any employee of a state-owned or state-controlled enterprise or of a public international organization), candidate for political office, or official of a political party, or any employee, director, or consultant of a non-government client or potential client, for the purpose of securing any improper or unfair advantage or obtaining or retaining business in connection with the activities contemplated hereunder or for the purpose of improperly inducing or rewarding favorable treatment or advantage in connection with this Agreement. Each Party agrees to immediately notify the other of any request that it receives to take any action that reasonably might constitute, or be construed as, a violation of the Anti-Corruption Laws.

**14. Staffing.** Supplier represents that it will recruit, interview, test, select, and hire the persons who provide the Services under this Agreement. Supplier shall perform a background check for all employees of Supplier assigned to work at a TPS facility prior to the employee's first date of reporting to TPS. Prior to assigning any employee of Supplier to work at a TPS facility, Supplier shall confirm the individual is legally authorized to work in the United States. Supplier will complete and maintain I-9 forms for all such employees in compliance with the Immigration Reform and Control Act of 1986. To protect and preserve the safety of TPS's personnel and

equipment and the order of TPS's operations, TPS may bar any of Supplier's Personnel from a facility at any time who pose a safety risk or a risk of substantial damage to TPS's property. Supplier warrants that it will not assign to TPS's property any of Supplier's Personnel who Supplier knows, or should know, have been removed from any TPS facility for intentional property damage, a safety violation, or illegal conduct.

**15. Safety Data Sheet.** Supplier shall supply TPS with a Safety Data Sheet ("SDS") that meets all the requirements of the applicable OSHA/MSHA standard for all goods purchased. Seller will also assure that every product delivered is labeled in compliance with all applicable laws and regulations.

**16. Materials.** Supplier shall be solely responsible for the handling, transportation, and disposal of any and all materials, substances, and chemicals that Supplier or Supplier's Personnel brings onto a TPS facility, and any waste generated or resulting from the use thereof. Supplier shall not dispose or permit the release of any material, substance, or chemical, or any waste generated or resulting from the use thereof on or at the facility. Supplier shall handle, transport, and dispose of any and all substances and chemicals, including, but not limited to, hazardous wastes and substances in accordance with all Laws.

**17. Equipment.** Unless otherwise specified in the Order, Supplier shall provide and pay for all labor, materials, tools, equipment, machinery, transportation, and other facilities and services necessary for the proper execution and completion of the matters contemplated in the Order. Supplier's use of TPS's equipment, tools, scaffolding, or other materials (collectively "**TPS Equipment**") is strictly prohibited without prior written consent of TPS. If Supplier will use TPS Equipment, Supplier agrees to inspect the TPS Equipment and agrees that it will not use TPS Equipment unless it is suitable for the intended use and consistent with all Laws. The determination of the suitability of use and consistency with Laws of TPS Equipment is to be made solely by Supplier, and TPS makes no representation as to the suitability of any TPS Equipment used by Supplier for any particular use. Supplier assumes full responsibility for the proper use of the TPS Equipment and shall return all TPS Equipment to TPS in at least as good condition in which it was borrowed, ordinary wear and tear excepted. TPS Equipment shall only be operated by Supplier's trained and qualified personnel.

**18. Safety Policy.** Supplier agrees that the prevention of accidents in connection with Supplier's delivery of Goods and performance of Services is a responsibility of Supplier. TPS's safety policies and procedures for delivering Goods and providing Services at TPS's facilities can be found at <http://contractorsweb.mosaicco.com> under "Policies and Procedures." In addition to all Laws, Supplier must comply with these policies and procedures, which are incorporated by reference into these Terms and Conditions. Supplier shall provide safety training to Supplier's Personnel in accordance with these safety policies and procedures and Supplier's safety policies and procedures. Such training must be completed prior to Supplier's Personnel beginning to perform any Services at a TPS facility and must, at a minimum, comply with OSHA Standard Part 1926, and any other Laws that may be applicable to Supplier's Personnel when providing Services at the facility. Supplier must have and provide TPS with a written safety program for the Services, a written Preventative Maintenance program for its equipment, and a written Quality Assurance / Quality Control program. Prior to beginning to provide Services at a facility, Supplier also agrees to have all of Supplier's Personnel complete any required OSHA/MSHA and site-specific training. Supplier acknowledges that there are certain natural and man-made hazards that may exist on or nearby TPS's facilities, including without limitation unstable soil conditions, sediment, rocks, minerals, ponds, lakes, waterways, ditches, berms, wildlife and vegetation. Supplier acknowledges that TPS's facilities may be part of or adjacent to certain past, present and future mining activities, operations, and facilities. Supplier agrees that it is incumbent upon Supplier and Supplier's Personnel to recognize and understand whether their activities under this Agreement are located nearby mining activities, operations, facilities, and other natural and man-made hazards, and to conduct themselves with respect to these hazards in ways that protect their safety, the public's safety, and the safety of TPS's employees, contractors, and other invitees.

**19. Drug and Alcohol Policy.** Supplier expressly agrees that Supplier will never undertake work and will never allow any of Supplier's Personnel to undertake work when impaired by alcohol or drugs. Supplier must have a lawful screening process in place, to include background checks as allowed by law and a legally compliant drug and alcohol testing program to include random testing where allowed.

**20. Equal Employment Opportunity.** To the extent applicable, Supplier and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veteran or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status or disabilities. To the extent applicable, Executive Order 11246 and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Agreement.

**21. Code of Business Conduct Standards Compliance.** Supplier must follow the general business conduct standards set forth in the TPS Supplier Code of Business Conduct and Ethics, which can be found at <http://contractorsweb.mosaicco.com> under the "Partner Ethics" tab. Supplier will notify all Supplier's Personnel assigned to work on TPS's property that they must comply with TPS's general business conduct standards set forth in the Code. Supplier shall be responsible for any violations of the Code by Supplier's Personnel.

**22. Sanctions.** Supplier understands that TPS is a U.S. entity and must observe economic sanctions laws, export control laws, anti-boycott laws and trade restrictions imposed, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of Commerce's Bureau of Industry and Security ("BIS"), and other applicable U.S. economic and trade measures, as well as those administered by the United Nations Security Council, the European Union, the United Kingdom, and any other jurisdiction with authority over contemplated transactions (collectively, the "Sanctions Laws"), in connection with the Goods and Services subject to this Agreement. Accordingly, Supplier certifies that neither it nor any of its directors, officers, or employees (i) has been designated under any Sanctions Laws, including in lists administered by OFAC and BIS; or (ii) is directly or

indirectly owned or controlled by, or acting for or on behalf of, an entity or person designated under any Sanctions Laws. Supplier also warrants that any Goods subject to this Agreement and Services performed in connection with it (including any software or other technology), have not been, directly or indirectly, mined, produced, manufactured, or transported in ways prohibited by Sanctions Laws, including (i) from or by any individuals or entities designated under the Sanctions Laws in violation of such Sanctions Laws or from or by any other prohibited end-users, or (ii) from or through any territories subject to an embargo under the Sanctions Laws, including Cuba, Iran, North Korea, Syria, and the Ukrainian regions of Crimea, Donetsk, Kherson, Luhansk and Zaporizhzhia. Should Supplier discover, or otherwise become aware of, circumstances presenting a violation of this provision or any Sanctions Laws, Supplier shall notify TPS as soon as practicable, but in no event later than twenty-four (24) hours after discovery and agrees to cooperate with TPS in order to take all necessary corrective actions.

**23. General Indemnification.** To the extent permitted by Laws, Supplier agrees to indemnify, defend, and hold harmless TPS, as defined below, and all officers, directors, and employees of any of the foregoing (collectively the “*TPS Indemnitees*”) from and against any and all claims, losses, damages, liabilities, fines, penalties, costs and expenses (including reasonable legal fees and reasonable costs of investigations) (“*Losses*”) incurred by any TPS Indemnitee, whether direct or indirect, as a result or arising out of (i) any breach by Supplier of the provisions of this Agreement; (ii) any negligent, reckless, or willful acts or omissions of Supplier or Supplier’s Personnel; (iii) any release of any substance, waste, or material resulting from the acts or omissions of Supplier or Supplier’s Personnel; and (iv) any use of TPS Equipment by Supplier or Supplier’s Personnel; and (v) any use of subcontractors by Supplier. Subject to the provisions of Section 44 (Statutory Employer) and the Louisiana Worker’s Compensation Act, La. R.S. 23:1021 et seq., if and as applicable, (i) TPS will not be responsible or liable to Supplier or Supplier’s Personnel (including Supplier’s insurance carrier), for any worker’s compensation benefits paid to Supplier’s employees; (ii) supplier waives any claims, liens, causes of action, or any other rights to it or its agents, including insurance carriers, may have against TPS for sums paid by or to be paid by Supplier, relating to any payments made to Supplier’s employees by Supplier pursuant to its workers’ compensation obligations; and (iii) supplier also waives any claims, liens, causes of action, or any other rights it or its agents, including insurance carriers, may have against any of the TPS Indemnitees for any sums paid by or to be paid by Supplier, relating to any actions or claims by Supplier’s employees against TPS.

**24. Intellectual Property Infringement Indemnification.** To the extent permitted by Laws, Supplier agrees to indemnify, defend, and hold harmless the TPS Indemnitees from and against any and all Losses incurred by any TPS Indemnitee as a result or arising out of any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trade secret, or other proprietary right arising from the purchase, use, manufacture, or sale of Goods or Services. In the event that the Goods or Services, in TPS’s reasonable opinion, are likely to infringe a patent or copyright, or misappropriate a trade secret (and in any event, if a court of law finds that the Goods or Services, in fact, do infringe or misappropriate), Supplier shall further provide TPS one of the following forms of relief to be chosen by Supplier, at Supplier’s expense: (i) obtain a license on TPS’s behalf to continue to use or sell the Goods or Services; (ii) redesign the Goods or Services so that they do not infringe or misappropriate; or (ii) refund TPS the price paid for the Goods or Services in question. These remedies are in addition to, and not in lieu of, all other remedies that may be available to TPS, including the indemnification rights under this Section 24.

**25. Early Termination or Suspension for Convenience.** TPS may terminate this Agreement at any time, for convenience, upon thirty (30) days prior written notice to the Supplier. In the event of such termination, TPS shall pay Supplier (a) the agreed unit prices only for those Services satisfactorily performed and those conforming Goods delivered to TPS prior to the date of termination; and (b) actual direct costs and expenses, including cancellation charges under binding subcontracts, as Supplier may incur in connection with such cancellation; provided, however, that under no circumstances shall the total of such payments exceed the total price stated in the Order. Except with respect to TPS’s obligations involving payments for Goods delivered and Services performed and those respective obligations and liabilities of the Parties that would survive termination of the Agreement pursuant to Section 39 of these Terms and Conditions, TPS in its discretion may also suspend the Parties’ performances of their respective obligations under the Agreement. If TPS decides to suspend the Parties’ performances of their respective obligations, Supplier shall be entitled to compensation for any actual out-of-pocket costs directly caused by the suspension. Supplier shall provide TPS with written evidence of such costs. If the suspension lasts for more than two (2) months, the Agreement shall be deemed terminated by TPS for convenience, provided TPS and Supplier do not agree otherwise in writing. Notwithstanding the foregoing, TPS hereby reserves the right to reschedule any delivery at any time prior to shipment of any of the Goods or prior to commencement of any of the Services. Supplier agrees that the remedies provided in this Section 25 shall be the sole and exclusive legal and equitable remedies for TPS’s termination for convenience of the Agreement or suspension of the Parties’ performances of their respective obligations under the Agreement; TPS shall not be subject to any other charges or other fees as a result of such termination or suspension.

**26. Termination for Cause.** This Agreement may also be terminated (a) by Supplier, upon fifteen (15) days prior written notice to TPS of a failure to timely pay the undisputed portion of any invoice, provided TPS fails to remedy its failure to pay within the fifteen (15) day notice period; (b) by TPS, as provided in Section 13 of these Terms and Conditions; (c) by either Party, immediately upon written notice in the event the other Party has breached any material obligations under this Agreement; or (d) by either Party, immediately if the other Party commences a judicial or administrative proceeding under a law relating to insolvency for the purpose of reorganizing or liquidating the debtor or restructuring its debt; a receiver, trustee, administrator, or liquidator is appointed or authorized, by law or under a contract, to take charge of property of the other Party for the purpose of enforcing a lien against that property, or for the purpose of general administration of that property for the benefit of the other Party’s creditors; the other Party makes a general assignment for the benefit of creditors; anyone commences any such proceeding against the other Party and either (i) the proceeding is not dismissed by midnight at the end of the sixtieth (60th) day after commencement, or (ii) any court before which the proceeding is pending issues an order approving the case; or the other Party generally fails to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

**27. Remedies.** In the event of Supplier's failure to perform any of its obligations hereunder, TPS may, at its option, recover from Supplier its expenses, cancellation fees, foreign exchange losses, the Order price less market value differential at the point of delivery, and reasonable attorneys' fees, and may exercise any and all rights and legal and equitable remedies as may be available to TPS, including without limitation injunctive relief or a decree of specific performance. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided to the contrary in Sections 23 and 24 of these Terms and Conditions.

**28. Assignment.** Supplier may assign or transfer the Agreement in whole or in part with the prior written consent of TPS, which consent may be withheld by TPS in its sole discretion; in such event Supplier shall be jointly and severally liable with any such transferee or assignee for all of its obligations under the Agreement that are so assigned or transferred. TPS may freely assign the Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**29. Insurance.** Prior to the execution of this Agreement, and upon the renewal of any policy, Supplier shall and shall cause each subcontractor to furnish to TPS copies of insurance certificates evidencing that it maintains the following coverages or such greater coverage as required by law or regulation, with an insurance carrier or carriers having an A. M. Best rating of A- or better, or an equivalent rating by another rating agency:

a. Workers' Compensation and Occupational Disease insurance in accordance with the Workers' Compensation Act(s) of the jurisdiction wherein Services under this Agreement are to be performed. When work is being performed on or near navigable waters, US Longshoremen and Harbor Worker's Act (USL&H) and/or Jones Act coverage, when such laws, regulations, or statutes apply.

b. Employers' Liability insurance with limits of liability of not less than \$5,000,000 per accident or disease including death at any time resulting therefrom.

c. Commercial General Liability (CGL) insurance including Completed Operations Liability insurance and a Broad Form Contractual Liability provision to cover the liability assumed by the Supplier under this Agreement. This insurance shall provide a combined single limit for bodily injury and property damage of not less than \$5,000,000 per occurrence. Policy should include Additional Insured endorsement CG 20 10 or CG 20 33, and CG 20 37 or CG 20 38 (or their equivalents). Such insurance shall be renewed annually for six (6) years beyond final completion of the Services.

d. Business Automobile Liability insurance covering all automotive equipment used in the performance of the work under this Agreement with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage combined.

e. If the Services will include professional services, Professional Liability insurance, including contractual, covering Supplier's professional errors and omissions with a \$5,000,000 annual aggregate limit. Such insurance shall be renewed annually for six (6) years beyond final completion of the Services.

f. If the Services will include use of, remediation, treatment, storage, recycling, or disposal of waste or hazardous materials on or about the TPS facility, Supplier's Pollution Liability (for contractors) or Pollution Legal Liability (other than contractors) should be provided on an occurrence basis with limits not less than \$5,000,000 per occurrence.

Limits under b, c, d and e above may be satisfied with a combination of primary and umbrella or excess liability policy(s).

All insurance required, except workers' compensation and professional liability, shall name "TPS" as defined herein as Additional Insured. All liability policies shall include a standard separation of insureds provision.

TPS has not represented and does not represent that the insurance or the limits of insurance hereinbefore specified are sufficient or adequate to protect Supplier's interests or cover fully its liabilities under this Agreement. The limits of coverage shall not be deemed to limit Supplier's liability hereunder.

Supplier agrees and its insurer shall agree that Supplier's policies (including Supplier's excess policies) will be primary without right of contribution from TPS or its insurance policies. Supplier further agrees and its insurer shall agree (i) to waive their rights of subrogation against TPS and (ii) that the above insurance coverages will not be invalidated for any TPS Indemnitee by any action, inaction or negligence of Supplier.

Supplier shall, to the extent reasonably possible, obtain the liability insurance required hereunder on an occurrence rather than a claims-made basis. To the extent that Supplier must obtain some or all of this coverage on a claims-made basis, Supplier shall, prior to the commencement of the Services, provide TPS with satisfactory evidence that the retroactive date of the claims-made policy is prior to the date of commencement of any of the Services by Supplier, and that the policy will either remain in force, be renewed, or if cancelled, a discovery period of not less than six (6) years will be purchased to cover any claims which might arise hereunder in the future.

The funding of deductibles and self-insured retentions maintained by Supplier shall be the sole responsibility of Supplier, including any amounts applicable to deductibles or self-insured retentions applicable to claims involving the Owner as an additional insured.

Certificates of insurance shall be executed by a duly authorized representative of each insurer, as evidence of compliance with the insurance requirements set forth above. Such certificates of insurance shall evidence coverage afforded to "TPS" as additional insured, on a primary, non-contributory basis, and reflect insurer's concurrence with Supplier's waiver of subrogation rights against "TPS." Renewal certificates shall be provided to TPS prior to the expiration of the required insurance policies.

Certificates of insurance shall be subject to TPS's approval, but the failure of TPS to request such certificate or other evidence of Supplier's compliance with the above insurance requirements, or the failure of TPS to identify deficiencies from the evidence provided, shall in no way limit or relieve Supplier of its obligations to maintain such insurance.

Insurance Certificates should be addressed and sent to an authorized TPS representative at the address referenced in the Order.

**30. Relationship of the Parties.** Nothing in this Agreement shall be construed to create a joint venture or partnership between the Parties or an employer/employee or agency relationship, except to the extent Section 44 is applicable. Supplier will be an independent contractor with respect to the Services, and TPS will have no right to exercise supervision as to or control over the manner or method of performing the work or to direct the day-to-day work of any of Supplier's employees performing work under this Agreement. Neither Supplier nor Supplier's Personnel will be deemed to be the servants, employees or agents of TPS. It is understood that Supplier is the sole employer of all its employees. TPS is not the employer of any of Supplier's employees and disclaims any actual or potential control over any essential terms and conditions of employment, including but not limited to how Supplier's employees are hired, terminated, disciplined, paid, employed, assigned, or managed. Supplier is free to set employment policies, wages, benefits, and other terms and conditions of employment any way that it chooses, as long as it accomplishes the tasks for which TPS has contracted with Supplier this Agreement. Supplier and Supplier's Personnel will have no right or authority to act for TPS, and will not attempt to enter into any contract, commitment, or agreement or incur any debt or liability of any nature in the name of or on behalf of TPS. Supplier will be fully and exclusively liable for the payment of any and all taxes now or hereafter imposed by any government authority which are measured by wages, salaries, or commissions paid to Supplier's employees, and compensation, contributions, and benefits to or on behalf of Supplier's Personnel including any penalties for Supplier's improper calculation of compensation, contributions, or benefits. Supplier will indemnify, defend, and hold TPS harmless against any claims for such taxes, compensation, contributions, benefits, and penalties, and against any claims based on an accident that is covered by workers' compensation insurance procured by Supplier.

**31. Subcontractors.** Supplier will not sublet or subcontract any portion of the Services without written permission from TPS. If Supplier chooses to sublet or subcontract with TPS's permission, Supplier shall ensure that the subcontractor performs the sublet or subcontracted Services under a written agreement requiring subcontractor to comply fully with the obligations of this Agreement to the same extent required of Supplier; in such event Supplier shall be jointly and severally liable with any such subcontractor for all of Supplier's obligations under the Agreement that are so sublet or subcontracted. Supplier must have in place and provide to TPS a documented subcontractor evaluation process prior to any sublet or subcontracted work being performed.

**32. Confidentiality.** Supplier understands that it may be exposed to trade secrets and confidential and proprietary information of or about TPS ("**Confidential Information**"). Confidential Information may include, by way of example but without limitation, business information, technical information, financial information, products, specifications, formulae, equipment, business strategies, financial information, marketing information, customer lists, know-how, drawings, pricing information, trade secrets, inventions, ideas, and other information, or its potential use, that is owned by or in possession of TPS. Confidential Information will not include that which: (i) is in the public domain prior to disclosure by TPS to Supplier; (ii) becomes part of the public domain, by publication or otherwise, through no unauthorized act or omission on the part of Supplier; or (iii) is lawfully in Supplier's possession prior to disclosure by TPS. Supplier shall obtain legal commitments to maintain the confidentiality of the Confidential Information from Supplier's Personnel who may be permitted access to such Confidential Information. Supplier shall be liable to TPS for any breach of this Section 32 by Supplier's Personnel. Throughout the term of this Agreement and thereafter, Supplier will not disclose Confidential Information to any third party without prior express written consent of TPS and unless required by law or court order. If Supplier is required by law or court order to disclose Confidential Information, Supplier will provide TPS prompt written notice of such requirement so that an appropriate protective order or other relief may be sought and Supplier shall cooperate with TPS to obtain said protective order or other remedy. The obligations imposed by this Section 32, including but not limited to non-disclosure and non-use, however, will endure so long as the Confidential Information does not become part of the public domain. Confidential Information will be used only in connection with the Goods and Services; no other use of Confidential Information will be made by Supplier, it being recognized that TPS has reserved all rights to Confidential Information not expressly granted herein. All documents containing Confidential Information and provided by TPS will remain the property of TPS, and all such documents, and copies thereof, will be returned or destroyed upon the request of TPS. Documents prepared by Supplier using Confidential Information, or derived therefrom, will be destroyed upon request of TPS, confirmation of which will be provided in writing. Supplier acknowledges a breach of this Section 32 would cause irreparable harm to TPS, which harm could not be adequately compensated for by damages. Accordingly, in the event of such breach, Supplier acknowledges and agrees that TPS will be entitled, in its discretion and in addition to any remedies which may be available to it at law, to injunctive or equitable relief against Supplier (or Supplier's Personnel).

Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement prohibits Supplier or Supplier's Personnel from reporting to any governmental authority information concerning possible violations of law. Supplier and Supplier's Personnel may disclose Confidential Information to a government official or to an attorney and use it in court proceedings without fear of prosecution or liability, provided such person files any documents containing Confidential Information under seal and does not disclose the Confidential Information except pursuant to court order.

**33. Information Security.** Supplier warrants that it and Supplier's Personnel will abide by TPS's information security requirements, as outlined in TPS's Security Exhibit, which is available at <http://www.mosaicco.com/suppliers> under "Purchase Order Terms and Conditions" and is incorporated by reference into these Terms and Conditions.

**34. Ownership of Information.** All technical or business information, in whatever medium or format, including but not limited to, formulas, patterns, compilations, programs, devices, methods, techniques, processes, data, financial information, specifications, drawings, records, reports, proposals, software and related documentation, inventions, concepts, research and other information (collectively "**Information**"), originated or prepared by or for Supplier (either solely or jointly with others) in contemplation of, or in the course of, or as a result of, Services performed hereunder, shall be promptly furnished to TPS. All Information shall become the



exclusive property of TPS and shall be deemed to be works for hire. To the extent that it may not, by operation of law, be works for hire, Supplier hereby assigns to TPS all rights, title and interest in and to such Information including rights to copyright in all copyright material and in and to all patents that may be issued thereon. All such Information shall be deemed "Confidential Information" pursuant to Section 32 of these Terms and Conditions. Upon the earlier of (i) delivery of the Goods and completion of the Services, or (ii) expiration or termination of this Agreement, Supplier shall deliver all copies of the Information to TPS, except that Supplier may retain one (1) copy of such Information for record purposes only at Supplier's expense, subject to the requirements of Section 32 of these Terms and Conditions. To the extent TPS delivers to Supplier Specifications for Goods or Services, TPS grants Supplier a nonexclusive, nontransferable, limited license to use the Specifications solely for the purposes of manufacturing the Goods or performing the Services. Supplier may use the logos, tradenames or trademarks (collectively "**Logos**") provided to Supplier by TPS solely as permitted by TPS for use with the Goods hereunder. TPS has the right to approve any and all use of the Logos, and may terminate use at any time.

**35. Force Majeure.** Neither Party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, without such Party's fault or negligence, and which by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strikes, and embargoes. Supplier's economic hardship, subcontractor delays, and changes in market conditions are not considered Force Majeure Events. Supplier shall promptly notify TPS in writing of the occurrence of a Force Majeure Event and use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, and resume performance under this Agreement. If a Force Majeure Event prevents Supplier from carrying out its obligations under this Agreement for a continuous period of more than twenty (20) days, TPS may terminate this Agreement immediately upon written notice to Supplier.

**36. Governing Law.** This Agreement, as well as all claims relating to or arising out of this Agreement, or the negotiation, execution, performance or breach of this Agreement, whether sounding in contract, tort or otherwise, is to be construed, and the respective rights of the Parties are to be determined, according to the law of the State of Florida (U.S.A.), without regard to its conflict of laws principles, including the Uniform Commercial Code as enacted in Florida, and excluding the United Nations Convention on Contracts for the International Sale of Goods of 1980, the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.

Notwithstanding the foregoing, to the extent the Services giving rise to a claim pursuant to this Agreement are to be performed in the State of Louisiana, then this Agreement, as well as all claims relating to or arising out of this Agreement, or the negotiation, execution, performance or breach of this Agreement, whether sounding in contract, tort or otherwise, is to be construed, and the respective rights of the Parties are to be determined according to the law of the State of Louisiana (U.S.A.), shall apply without regard to its conflict of laws principles, including the Uniform Commercial Code as enacted in Louisiana, and excluding the United Nations Convention on Contracts for the International Sale of Goods of 1980, the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.

**37. Severability; Waiver.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The failure of either of the parties hereto to exercise any of its rights or remedies under the Agreement shall not operate as a waiver of any such right or remedy on later occasions.

**38. Entire Agreement.** This Agreement sets forth the full and complete understanding of the Parties as of the date of the Act of Acceptance, and with respect to the Goods and Services to be provided under this Agreement it supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the Goods and Services identified in the Order.

**39. Survival.** Any obligations and liabilities which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement, including Sections 8, 11, 13, 16, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 34, 36, 37, 39, 42, and 43 of these Terms and Conditions.

**40. Amendment and Modification.** These Terms and Conditions may only be amended or modified in a writing stating specifically that it amends these Terms and Conditions and is signed by an authorized representative of each Party.

**41. Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**42. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein, express or implied, except as expressly provided in Section 23 (Indemnification), Section 24 (Intellectual Property Infringement) and Section 29 (Insurance) of these Terms and Conditions, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**43. Notices.** Except for Orders which may be sent by local mail, facsimile transmission, or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Supplier or to an authorized TPS representative at the address referenced in the Order, and shall be considered given when (a) delivered personally, (b) sent by confirmed facsimile or e-mail; (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid,

by first class or certified mail.

**44. Statutory Employer.** In all cases where Supplier's employees (meaning Supplier's direct, borrowed, special or statutory employees) are covered by the Louisiana Worker's Compensation Act, La. R.S. 23:1021 et seq., TPS and Supplier agree that TPS shall be and hereby are designated as the statutory employer of Supplier's direct, borrowed, special and statutory employees, pursuant to La. R.S. 23:1061(A)(3). TPS and Supplier further agree that the Goods and/or Services to be provided by Supplier are an integral part of and essential to TPS's ability to generate their respective goods, products and services. This provision is included for the sole purpose of establishing a statutory employer relationship to gain the benefits expressed in La. R.S. 23:1061 and is not intended to create an employer/employee relationship for any other purpose. In the event that TPS is required to pay worker's compensation benefits to Supplier's direct, borrowed, special or statutory employees, whether as a statutory employer pursuant to La. R.S. 23:1061 or as a special employer pursuant to La. R.S. 23:1031(C), to the maximum extent permitted by applicable law, TPS shall be entitled to indemnity from Supplier for any such benefit payments. Neither Supplier nor its underwriters shall be entitled to seek contribution from TPS for any worker's compensation benefits payments made on behalf of any of Supplier's direct, borrowed, special or statutory employees for purposes of La. R.S. 23:1031(C).