

The Supplier agrees to supply the Goods and/or Services requested by the Company on the terms and conditions set out below.

## 1. Terms and definitions

- 1.1 Unless the context of a Purchase Order otherwise requires, the following definitions shall apply:
- (a) **Company** means Emerging Compounds Treatment Technologies, Inc. ABN 48 618 421 659 t/as ECT2.
  - (b) **Completion Date** means the date for completion of the Services outlined in the Purchase Order, or where no time is stated, within a reasonable time.
  - (c) **Contract** means the contract formed on the basis of these terms and conditions in accordance with clause 2.
  - (d) **Contract Documents** means the documents referred to at clause 2.2(a).
  - (e) **Contract Price** means the amount stated to be the total price, inclusive of GST, on the Purchase Order.
  - (f) **Delivery Address** means the address for delivery specified in the Purchase Order or, if no delivery address is specified in the Purchase Order, the Delivery Address shall be Unit 3, 31 Camfield Drive Heatherbrae NSW 2324.
  - (g) **Delivery Date** means the delivery date specified in the Purchase Order.
  - (h) **Goods** means the Goods specified in the Purchase Order, and includes any parts, consumables and software supplied by the Supplier for the purposes of complying with the requirements of this Order.
  - (i) **GST** has the meaning provided in the GST Act.
  - (j) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
  - (k) **Purchase Order** means the purchase order issued by the Company to the Supplier.
  - (l) **Purchase Order Number** means the reference number allocated to the supply that is specified in the Purchase Order.
  - (m) **Security of Payment Law** means the laws in the State or Territory applying to the Contract governing the rights of parties in the building and construction industry to obtain security for payment (in New South Wales being the Building and Construction Industry (Security of Payment) Act 1999 (NSW)).
  - (n) **Services** means the services described in the Purchase Order, and includes Variations.
  - (o) **Supplier** means the person or company to whom the Purchase Order is addressed.
  - (p) **Variation** means to vary the supply of the Goods or the Services by; supplying additional or varied Goods, carrying out additional services, omitting any part of the Services or changing the scope of the Services or supply of the Goods.
  - (q) **Workers Compensation Legislation** means the laws in the State or Territory applying this Contract governing the rights of parties in relation to workplace safety, and in New South Wales being the Workers Compensation Act 1987 (NSW);
  - (r) **Work Health and Safety Laws** means the laws in the State or Territory applying this Contract governing the rights of parties in relation to workplace safety, and in New South Wales being the Work Health & Safety Act 2011 (NSW)
- 1.2 In this Contract, unless otherwise indicated by the context: (a) the singular includes the plural and vice versa; (b) a reference to one gender includes a reference to all other genders; (c) headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate; (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any Orders, regulations, instruments or other subordinate legislation made under the relevant statute; (e) the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not; (f) the Contract will bind each party's legal personal representatives, successors and assigns; and (g) where a party comprises two (2) or more persons the rights and obligations of such persons pursuant to the Contract will ensue for the benefit of and bind each of them jointly and severally.

## 2. Application

- 2.1 These terms and conditions, the Purchase Order, and any document expressly referred to in the Purchase Order, comprise the entire agreement between the Company and the Supplier relating to the supply of the Goods and/or Services.
- 2.2 The Supplier shall be deemed to have accepted these terms and conditions and entered into a binding contract with the Company if the Supplier:
- (a) accepts the Purchase Order in writing; or,
  - (b) supplies the Goods and/or Services to the Company after receiving the Purchase Order.
- 2.3 Notwithstanding Clause 2.2, the Company may insist on the Supplier accepting the Purchase Order and these terms and conditions in writing by signing the Purchase Order or another form of written acceptance.
- 2.4 No document or statement other than the documents referred to at clause 2.1 shall form part of the agreement between the Supplier and the Company. Despite the Supplier at any time providing, referring to, submitting or otherwise using or purporting to use any terms and conditions other than these terms and conditions (including any such terms and conditions stated by the Supplier in accepting or acknowledging the order of the Goods and/or Services by the Company), such terms and conditions will not form part of, or be incorporated into, the Contract.
- 2.5 The Company makes no warranty about the minimum quantities of, or requirements for, the Goods and/or Services by the issue of a Purchase Order. The purchase of the Goods and/or Services by the Company is non-exclusive and the Company may engage other suppliers to supply the same or similar Goods and/or Services.
- 2.6 In the event of any inconsistency or conflict between these terms and any other documents forming part of the Contract, the following order of precedence shall apply to resolve the conflict (from highest to lowest precedence): (1) the Purchase Order; (2) these terms and conditions (3) any documents expressly referred to in the Purchase Order.

## 3. Insurances and Compliance in Respect of the Services

- 3.1 Prior to the commencing the supply of the Services and during the term of the Contract the Supplier must hold and maintain insurance against:
- (a) public liability,
  - (b) any liability arising under Workers Compensation Legislation,
  - (c) all other losses in respect of which the Supplier is required to maintain insurances by law, and
  - (d) such other risks that the Company may reasonably require from time to time.
- 3.2 The Supplier must:
- (a) when requested by the Company, produce evidence of the existence and currency of any of the above insurance policies, and
  - (b) comply with all obligations under Work Health & Safety Laws.

## 4. Supply and delivery of the Goods

- 4.1 The Supplier shall supply the Goods by delivering them to the Delivery Address by the Delivery Date. This is an essential term of this Contract and time is of the essence.
- 4.2 If the Supplier fails to comply with clause 3.1 the Company may, without prejudice to any other rights it may have, elect to reject or return the Goods (in part or in whole) and/or terminate the Contract. No amount is payable by the Company to the Supplier arising from the exercise by the Company of its rights under this clause.
- 4.3 The Supplier shall provide all operating and maintenance manuals for the Goods at the time of delivery.
- 4.4 The Supplier must ensure that:
- (a) the Goods are adequately packaged and weather sealed to provide protection to the Goods in transit, handling and storage;
  - (b) prior to delivery, all plant and equipment that requires servicing in accordance with manufacturers recommendations and / or statutory requirements is compliant with such requirements and supplied full of all necessary consumables such as fuels and oils.
- 4.5 Delivery shall occur when the Goods have been delivered in good and working condition in accordance with the Contract Documents at the Delivery Address, and receipt of the Goods has been acknowledged in writing by the Company.

## 5. Performance of Services

- 5.1 The Supplier warrants that they:
- (a) are suitably qualified and experienced in performing the type of Services, the subject of this Contract,
  - (b) shall exercise due skill, care and diligence in carrying out the Services, and
  - (c) hold and will continue to hold all licenses required to carry out the Services.
- 5.2 The Supplier shall carry out and complete Services:
- (a) in accordance with this Contract,
  - (b) in compliance with all relevant codes, standards and specifications that the work is required to comply with under any law, and
  - (c) by the Completion Date.

## 6. Payment

- 6.1 The Supplier must provide the Company with a tax invoice for the supply of the Goods and/or the Services that satisfies the requirements of the GST Act and which states the Purchase Order Number at the time of delivery and/or completion of the Services, as relevant. The invoice must be emailed to [auacctpay@ect2.com](mailto:auacctpay@ect2.com).
- 6.2 Unless otherwise stated in the Purchase Order, the Company will pay the Contract Price to the Supplier within 30 days after the later of:
- (a) the date of receipt by the Company of the invoice relating to the Goods and/or the Services;

- (b) the date of delivery of the Goods in accordance with the Contract; and
  - (c) the completion of the Services in accordance with the Contract
- 6.3 The Contract Price is fixed and is not subject to rise and fall.
- 6.4 Unless otherwise stated, all amounts specified in the Purchase Order are inclusive of all applicable taxes, charges and duties, and all other costs and charges connected with the supply of the Goods and/or the Services, including packaging, carriage, insurance and delivery (including the cost of delivery to the Delivery Address).
- 6.5 The Company will have the right at any time to set-off any amount owing from the Supplier to the Company against any amount payable by the Company pursuant to this Contract.

## 7. Variation

- 7.1 The Company has the right at any time to make changes to the Goods and/or the Services to be supplied under the Contract (including but not limited to quantities ordered, specifications and drawings) by issuing an amended Purchase Order to the Supplier.
- 7.2 If the Company issues an amended Purchase Order to the Supplier changing the Goods and/or the Services to be supplied under the Contract, the Supplier is entitled to remuneration for that variation on the following basis:
- (a) If the amended Purchase Order results in the addition of Goods and/or the Services to be supplied, the Supplier will be paid the amount indicated on the amended Purchase Order for the corresponding Goods and/or the Services.
  - (b) If the amended Purchase Order results in:
    - (i) a variation to the Goods and/or the Services to be supplied; or,
    - (ii) an omission of Goods and/or the Services to be supplied,the Supplier will be paid the amount indicated on the amended Purchase Order for the corresponding Goods and/or the Services, in addition to the reasonable costs committed by the Supplier, as at the date of the amended Purchase Order, in respect of any varied or omitted Goods and/or the Services,
- but no cause of action for breach of contract or other right of action shall arise or be instituted by the Supplier as a result of the amended Purchase Order and the only remedy for the Supplier will be the right to payment of the remuneration referred to in this clause for that part of the Purchase Order that has been completed.
- 7.3 If an amended Purchase Order issued by the Company under this clause results in an increase or decrease in the time required for performance, an adjustment to the Delivery Date and/or Completion Date, as relevant, shall be made by the Company, acting reasonably.
- 7.4 Any claim by the Supplier for remuneration and/or time adjustment under this clause must be made within two (2) weeks from the date on which the amended Purchase Order is issued by the Company.
- 7.5 For the purposes of clause 5.2, "reasonable costs" means costs incurred for materials, labour, and any non-cancellable commitments made by the Supplier in good faith, prior to receipt of the amended Purchase Order.

## 8. Inspection and Testing

- 8.1 The Company, its insurers and any head contractor of the Company shall be entitled to inspect and test the Goods during manufacture, whether on the Supplier's premises or the premises of any subcontractor, and the Supplier shall attend the inspection and provide any requested assistance to those conducting the inspection and testing. Such inspection and testing shall not release the Supplier from any obligation of the Supplier under the Contract.
- 8.2 Without limiting the Supplier's obligations under this clause, if requested by the Company, the Supplier must:
- (a) provide regular reports on the progress of the manufacture or procurement for supply of the Goods in a form approved by the Company;
  - (b) provide all certificates of analysis and documents relating to the identity and quality of the Goods to an authorised representative of the Company; and
  - (c) permit the Company or its agents to audit the quality system of the Supplier.
- 8.3 The Company may have access to Services at reasonable times for the purposes of inspecting the progress of Services.
- 8.4 Unless expressly advised in writing otherwise, the Company is not required to provide any assistance to the Supplier to facilitate the Services or otherwise.
- 8.5 The Supplier must maintain its records relating to the Purchase Order and the supply of the Goods and/or Services for a period of seven (7) years and make these records available for inspection by the Company when and where reasonably required by the Company.

## 9. Warranties in Respect of Goods

- 9.1 Notwithstanding the Company's acceptance or right of inspection and/or other terms of the Contract, the Supplier represents and warrants that the Goods, the materials, workmanship and all other items furnished under the Contract:
- (a) are new and free from any encumbrances;
  - (b) are free from defects (including, without limitation, defects in materials, workmanship and design);
  - (c) conform in all respects with any drawings, specifications or description or other instructions provided by the Company, and are otherwise acceptable to the Company;
  - (d) comply with the requirements of any applicable laws and standards (including Australian Standards);
  - (e) are of merchantable quality and suitable and fit for their intended use and purpose
- The Company relies on this warranty by the Supplier in purchasing the Goods.
- 9.2 The Supplier must obtain and provide for the benefit of the Company and the person who engaged the Company ("the Principal") the guarantees and warranties, or other product conformance documentation as may be required under the Contract or as are advised by the Company.
- 9.3 Goods will not be deemed to have been accepted by the Company until the Goods have been received and inspected by the Company and determined by it, acting reasonably, to comply with all requirements of the Contract.
- 9.4 Acceptance of the Goods does not affect the Company's rights if the Company later discovers that the Goods do not comply with all requirements of this Contract, including any right to claim damages, including re-procurement costs or loss of profits, injury to reputation or other special consequential or incidental damages incurred by the Company.
- 9.5 If the Goods do not comply with all requirements of this Contract (including these terms and conditions), the Company may:
- (a) reject and return to the Supplier, at the Supplier's cost, any Goods not accepted by the Company, and the Company will not be liable to pay the price for those Goods; or
  - (b) require the Supplier to repair or replace the Goods at the Supplier's cost

## 10. Indemnity

- 10.1 The Supplier agrees to indemnify and hold harmless the Company from any and all actions, claims, demands, liabilities, losses, damages, proceedings and expenses, including special consequential and incidental damages, incurred or sustained by the Company arising from:
- (a) any breach of the Contract by the Supplier; and,
  - (b) any breach of representation or warranty with respect to the Goods and/or the Services,
- but the Supplier's liability to indemnify the Company will be reduced proportionately to the extent that a wrongful act or omission of the Company contributes to the loss, damage, cost, expense or other liability.

## 11. Title, Risk and Insurance in Respect of the Goods

- 11.1 Title to the Goods passes to the Company upon the earlier of:
- (a) delivery being effected in accordance with clause 3; and,
  - (b) payment for the Goods (or any part thereof) being made to the Supplier by the Company.
- 11.2 Risk in the Goods passes to the Company when delivery is effected in accordance with clause 3.
- 11.3 Where the Supplier retains ownership of Goods in respect of which title has passed to the Company, the Supplier must maintain adequate insurance in relation to the Goods and provide evidence of such insurance to the Company on request.

## 12. Intellectual Property

- 12.1 The Supplier warrants that the Goods and the sale or use of them will not infringe any copyright, trademark, patent or any other intellectual property right.
- 12.2 The Supplier will defend, at its own cost and expense, every action which may be brought against the Company or those selling or using the Company's product(s) for any alleged infringement of any such intellectual property right by reason of the sale or use of such Goods, and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action.
- 12.3 The Supplier indemnifies the Company from and against all claims and all losses and damages incurred by the Company as a consequence of any claim against the Company for infringement of intellectual property rights in connection with the supply of the Goods.

## 13. Suspension

- 13.1 The Company may, for any reason and at its absolute discretion, direct the Supplier in writing to suspend or delay the supply of the Goods and/or the Services in whole or in part for such period of time as the Company may determine.

## 14. Termination

- 14.1 The Company may at any time, and in its absolute discretion, elect to terminate the Contract by written notice to the Supplier.

- 14.2 Without prejudice to any of the Company's other rights under the Contract or otherwise at law, upon termination under clause 13.1:
- (a) the Supplier must comply with all reasonable directions given by the Company relating to the handover of the Goods and/or the Services (whether or not completed);
  - (b) the Supplier must be paid the reasonable cost of the services carried out to the date of termination and plant, equipment, materials, goods, items and other things reasonably ordered by the Supplier for incorporation into the Goods, which the Supplier is legally liable to accept, but only if:
    - (i) the plant, equipment, materials, goods, items and other things are delivered to the Delivery Address (or other place as directed by the Company), are adequately and indelibly labelled the property of 'Emerging Compounds Treatment Technologies, Inc' and are free from any claims and any liens, charges and other encumbrances; and
    - (ii) ownership of the plant, equipment, materials, goods, items and other things passes to the Company upon their delivery to the Delivery Address (or other place as directed by the Company) and acceptance by the Company; and
- and to the extent permitted by law, it is agreed that:
- (c) the Company will not be liable to the Supplier for any other costs, expenses, losses or damages as a result of the termination; and
  - (d) termination of the Contract under clause 13.1 is without prejudice to any right or remedy of either party that had accrued as at the date of termination.
- 14.3 The Supplier must:
- (a) take all reasonable steps to mitigate the costs referred to in clause 13.2(b); and,
  - (b) immediately hand over to the Company all copies of documents provided to the Supplier by the Company; and
  - (c) cause to be delivered to the Company all plant, equipment, materials, goods, items and other things for which the Company has paid.

## 15. Dispute Resolution

- 15.1 The parties must attempt to resolve any dispute or claim arising out of or under the Contract by negotiation in good faith before either party commences any litigation in relation to the dispute or claim. Accordingly, if a party considers that a dispute or claim has arisen under the Contract they must give written notice to the other party adequately setting out and providing details of the dispute.
- 15.2 The Company and the Supplier must meet within ten (10) Business Days of the giving of a notice pursuant to this clause to attempt to resolve the dispute or claim or to agree on methods of doing so. The parties must be represented at the meeting by a person with authority to agree to a resolution of the dispute.
- 15.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 15.4 The parties agree that anything done or said in the negotiations cannot be revealed in any court proceedings.
- 15.5 Nothing in this clause affects the rights of the parties pursuant to the Security of Payment Law or prevents either party from commencing urgent injunctive or interlocutory proceedings in a court.

## 16. Notices

- 16.1 The parties agree that email shall be the primary method of contact and communication in relation to any matters arising under the *Contract*.
- 16.2 A notice is deemed to have been given or serviced if the notice is:
- (a) delivered by hand to the other party;
  - (b) posted by ordinary prepaid mail to the other party's registered office on the seventh Business Day following the date of posting;
  - (c) sent by email to the party's email address stated at clause 6.1 upon receiving confirmation of delivery of the email without error.

## 17. General

- 17.1 These terms are governed by and must be construed in accordance with the laws of New South Wales, Australia. The parties agreed to submit to the exclusive jurisdiction of the Courts of New South Wales for any proceedings arising in connection with this Order.
- 17.2 Nothing in these terms should be construed as creating a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.
- 17.3 The Supplier must not, without the prior written consent of the Company, assign whether in whole or part the benefit of this Order or any rights or obligations under it.
- 17.4 Failure of the Company to insist upon strict performance of any of the terms of the Contract shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any Goods under the Contract shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of these terms.
- 17.5 The parties agree that a construction of the Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- 17.6 If, despite the application of clause 16.5, a provision of the Contract is illegal or unenforceable:
- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
  - (b) in any other case, the whole provision is severed,
- and the remainder of the Contract continues in force.