

EMERGING COMPOUNDS TREATMENT TECHNOLOGIES, INC.
STANDARD US TERMS AND CONDITIONS
FOR THE PURCHASE OF GOODS AND SERVICES

1. **GENERAL** - SUPPLIER shall provide SERVICES and/or GOODS under this AGREEMENT, in accordance with its standard terms and conditions, only upon request of the EMERGING COMPOUNDS TREATMENT TECHNOLOGIES, INC. (ECT2), and only to the extent defined and expressly required by ECT2 in a PURCHASE ORDER (PO). Attachments to this AGREEMENT shall be numbered POs, and with these standard terms and conditions, are all as attached hereto, and made a part of this AGREEMENT. This AGREEMENT shall take precedence over all inconsistent or contrary terms and conditions except if ECT2 expressly accepts additional terms and conditions in writing. SUPPLIER's acceptance of a PO shall be unqualified, unconditional and subject to this AGREEMENT. Any terms or conditions attached to, referenced in, or otherwise made part of SUPPLIER's PROPOSAL or related documents are null and void. The parties expressly disclaim and waive the use of Uniform Commercial Code (UCC) § 2-207 to modify this AGREEMENT or POs. SUPPLIER's written acceptance or commencement of performance under the PO shall create a binding contract and shall be conclusive evidence of the SUPPLIER'S acceptance of these standard terms and conditions and AGREEMENT, provided that ECT2 may unilaterally cancel a PO without cost at any time prior to having received SUPPLIER's written unqualified, unconditional acceptance hereof. Upon acceptance, this AGREEMENT shall constitute the entire agreement between ECT2 and SUPPLIER, and shall supersede all prior negotiations, discussions and dealings. This AGREEMENT may not be modified or rescinded except by a writing signed by both SUPPLIER and ECT2.
2. **DEFINITIONS** - Capitalized words in this AGREEMENT shall be afforded the meaning set forth by the Uniform Commercial Code (UCC) § 2-103 *et seq.*, and if not defined in §2-103 *et seq.*, secondarily shall be given the commercially reasonable meaning in use at the same time, in the same locale, and under like circumstances.
3. **PAYMENT** - If no payment terms are specified in the PO, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of GOODS or other performance conforming with the terms of this AGREEMENT and (ii) proper invoicing to ECT2's office. The SUPPLIER's price in the PO includes all applicable Federal, State and local taxes and duties unless a tax-exempt certificate has been provided by ECT2. SUPPLIER assigns to ECT2 all rights to refunds of sales and use taxes paid in connection with the PO and agree to co-operate with ECT2 in the processing of any refund claims. Unless expressly otherwise provided in the PO, ECT2 shall not be liable for any shipping, handling, fuel surcharges or similar fees. All prices are firm, fixed and not subject to escalation. No additional charges will be allowed for import duties, transportation, packaging, returnable containers, and/or documentation unless otherwise agreed in writing between the parties. ECT2 may, in its sole discretion, require lien releases upon payment by ECT2 of SUPPLIER's invoices. SUPPLIER agrees if it files any lien or an UCC-1 financing statement it shall provide ECT2 with a certified copy within twenty-four (24) hours or shall discharge the aforementioned at its sole cost.
4. **SUPPLIER'S PERFORMANCE** - All necessary LABOR, MATERIALS, SERVICES, GOODS and EQUIPMENT that the SUPPLIER requires to execute the PO shall be supplied by SUPPLIER, unless otherwise agreed to in writing. If SUPPLIER shall enter the property of ECT2's customer, SUPPLIER agrees to comply with all requirements of ECT2's customer in addition to this AGREEMENT and the PO. SUPPLIER may only subcontract its performance under the PO by first obtaining ECT2's prior written consent.
5. **TERMINATION** - ECT2, at its sole discretion, may terminate this contract for convenience at any time for any reason. Termination is effective immediately upon ECT2 sending an email, facsimile or mailed notice of termination. SUPPLIER'S sole remedy is UCC §2-703, except the parties agree that ECT2's total aggregate liability under a PO shall be limited to the value of the GOODS and/or SERVICES authorized and performed under the PO as of the date of termination. ECT2 shall have the right, without penalty or payment, to cancel any PO if (i) SUPPLIER breaches any of the terms of this AGREEMENT; (ii) SUPPLIER's insolvency or commission of an act of bankruptcy; (ii) commencement of proceedings by, for or against SUPPLIER under any law relating to bankruptcy or the relief of debtors; (iii) the appointment of a receiver or trustee for Supplier, whether voluntary or involuntary; (iv) the execution by SUPPLIER of an assignment for the benefit of creditors; and (v) the determination by ECT2, in its sole and reasonable judgement, that SUPPLIER's financial condition is such as to endanger its performance hereunder ("Termination for Cause"). In the event of a Termination for Cause, upon ECT2's request, SUPPLIER shall deliver to ECT2 full title and possession, in either case, of (i) the goods and service deliverables, or (ii) all raw materials, work-in-process and finished goods, parts and other material together with any associated warranties, and any subcontracted items which SUPPLIER has specifically produced or acquired or contracted for in accordance with this AGREEMENT, provided that ECT2 shall pay to SUPPLIER the unpaid balance of any amounts for work



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satisfactorily completed. No termination shall act as or deemed to be a waiver by ECT2 of any other right or remedy it may have at law, in equity, or under this AGREEMENT. The rights and obligations under this section shall survive the termination or expiration of this AGREEMENT and PO.

6. **IMPROPER PERFORMANCE AND DISPUTES** - In addition to other remedies provided by law, ECT2 reserves the right to reject any GOODS or to revoke any previous acceptance and to cancel all or any part of the PO if SUPPLIER fails to deliver all or any part of the GOODS or perform any of the SERVICES in accordance with the terms and conditions of the AGREEMENT and PO. Acceptance of any part of the PO shall not bind the ECT2 to accept any future GOODS or SERVICES, nor deprive it of the right to return GOODS already accepted. At ECT2's option, if ECT2 so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with a PO shall be resolved by good faith negotiation, mediation and/or arbitration in the Commonwealth of Massachusetts (MA) in accordance with the rules of the American Arbitration Association; and all disputes shall otherwise be resolved in and only in a court in MA as the exclusive judicial forum. ECT2 AND SUPPLIER WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THE PO.
7. **RELEASE TO MANUFACTURING AND CHANGES** - Prior to releasing an order to manufacturing, and within 14 days of receipt of the PO, the SUPPLIER shall provide full dimensional manufacturing drawings, wiring diagrams, cut sheets, and other pertinent shop drawings for approval by ECT2. ECT2 shall review and comment if there are deficiencies, and may require changes as appropriate. If information is acceptable, ECT2 shall provide approval and release for manufacturing based on comparison with the purchase documents and intended use of the products or materials. ECT2 reserves the right at any time prior to shipment to make changes as to: (a) ECT2's documents or specifications or related documents, including the specifications of any Goods to be specifically manufactured for ECT2; (b) methods of shipment or packing; (c) place of delivery, (d) schedule of delivery; and (e) size or amounts of the quantities ordered. If any such change causes an increase or decrease in the cost of or the time required for performance of a PO, an equitable adjustment may be made in the contract price or delivery schedule or both. Any claim by SUPPLIER for adjustment under this clause shall be waived by SUPPLIER unless asserted in writing within fourteen (14) days from receipt by SUPPLIER of the change requested by ECT2.
8. **WARRANTY** - SUPPLIER expressly warrants for a minimum period of one (1) year from the date the equipment goes into its intended service, or eighteen (18) months from receipt, that all (i) GOODS delivered under this PO to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) SERVICES performed under this PO to be in conformity with all plans, specifications and other data incorporated as part of this PO. These express warranties shall not be waived by reason of acceptance or payment by ECT2. The PO incorporates by reference all terms of the UCC, or as adopted in MA, providing any protection to ECT2 for GOODS, including but not limited to all warranty protection (express or implied) and all of ECT2's remedies under the UCC, MA statute or MA common law. All GOODS and SERVICES shall also be subject to any stricter warranties specified in the PO or in other materials incorporated in the PO by reference.
9. **INDEMNITY** - From and after the date of this PO, the SUPPLIER agrees to indemnify, defend and hold harmless ECT2 and its customer, and each parties principals, directors, employees and agents (Indemnified Party) from any and all claims and liabilities, regardless of by whom such claim or liability may be asserted, for personal injury (including death), or loss or damage to property, or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by SUPPLIER pursuant to this PO. With regard to SUPPLIER's obligation to defend, ECT2 shall have the right to select the legal counsel whom SUPPLIER shall provide to defend any Indemnified Party, subject to SUPPLIER's approval of the qualifications of such legal counsel and the reasonableness of counsel's hourly rates as compared to the rates of attorneys with similar experience and qualifications in the relevant area of legal expertise and in the jurisdiction where the claim will be adjudicated. If ECT2 elects, in its sole discretion, to retain separate legal counsel, in addition to or in lieu of the counsel to be provided by SUPPLIER, then all costs and expenses incurred by ECT2 for such separate counsel shall be borne by ECT2 and the SUPPLIER shall reasonably cooperate with ECT2 and its separate legal counsel in the investigation and defense of any such claim or action. SUPPLIER shall not settle or compromise any CLAIM or ACTION giving rise to CLAIMS in a manner that imposes any restrictions or obligations on ECT2 without ECT2's prior written consent. If ECT2 elects to require that SUPPLIER defend a CLAIM pursuant to this section, and SUPPLIER fails or declines to assume the defense of such CLAIM within thirty (30) days after notice thereof, ECT2 may assume the



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defense of such CLAIM for the account and at the risk of SUPPLIER, and any Liabilities related thereto shall be conclusively deemed a liability of SUPPLIER. The indemnification rights of the Indemnified Parties contained herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

10. **INSURANCE** - Unless modified in the PO, SUPPLIER, at its own cost and expense, shall obtain and maintain in force during the term of the PO, the following insurance coverage:

10.1 *If SUPPLIER does not enter the premises of ECT2's customer identified in the PO:*

- 10.1.1 Commercial General Liability:** Insurance must include premises/operations, products/completed operations, broad form contractual liability coverage, broad-form property damage, and underground, explosion, and collapse hazard coverages. The policy limit shall not be less than \$1,000,000 per occurrence.
- 10.1.2 Automobile Liability:** Insurance must cover owned, non-owned, rented, and leased vehicles. The policy limit shall not be less than \$1,000,000 per occurrence.
- 10.1.3 Workers' Compensation and Employer's Liability:** Insurance must be as prescribed by applicable law (including Longshoreman's and Harbor Workers' Act and the Jones Act, if applicable). The Employer's Liability policy limit shall not be less than \$1,000,000; as applicable.
- 10.1.4 Professional Liability Insurance:** If SUPPLIER is providing professional services, SUPPLIER must provide insurance that must cover losses resulting from the acts, errors or omissions of the SUPPLIER and include environmental impairment liability. The policy limit shall not be less than \$1,000,000. Claims-made policies must be maintained for three (3) years after completion of the PO.

10.2 *If SUPPLIER enters the premises of ECT2's customer identified in the PO:*

- 10.2.1 Commercial General Liability:** Insurance must include premises/operations, products/completed operations, broad form contractual liability coverage, broad-form property damage, and underground, explosion, and collapse hazard coverages. The policy limit shall not be less than \$5,000,000 per occurrence.
- 10.2.2 Automobile Liability:** Insurance must cover owned, non-owned, rented, and leased vehicles. The policy limit shall not be less than \$1,000,000 per occurrence.
- 10.2.3 Workers' Compensation and Employer's Liability:** Insurance must be as prescribed by applicable law (including Longshoreman's and Harbor Workers' Act and the Jones Act, if applicable). The Employer's Liability policy limit shall not be less than \$1,000,000; as applicable.
- 10.2.4 Professional Liability Insurance:** If SUPPLIER is providing professional services, SUPPLIER must provide insurance that must cover losses resulting from the acts, errors or omissions of the SUPPLIER and include environmental impairment liability. The policy limit shall not be less than \$1,000,000. Claims-made policies must be maintained for three (3) years after completion of the PO.
- 10.2.5 Pollution Liability:** Insurance must cover losses caused by pollution conditions arising from the SERVICES and operations of SUPPLIER and all sub-consultants and sub-contractors. The policy limit shall not be less than \$3,000,000 for each occurrence and shall be maintained.

SUPPLIER shall provide ECT2 with written certification, reasonably acceptable to ECT2, certifying that: (i) the required insurance coverages are in effect and will not be canceled or materially changed until thirty (30) days after prior written notice has been delivered to ECT2; (ii) ECT2 and ECT2's customer are designated as additional insureds on all of SUPPLIER's insurance identified herein with the exception of Workers' Compensation and Professional Liability; and (iii) all of SUPPLIER's insurance identified herein will be primary and not contributory or excess of any other insurance carried by or on behalf of ECT2. SUPPLIER may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies. Under the policies

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described in this Section 11, SUPPLIER agrees to waive and will require its insurers to waive any right of subrogation or recovery they may have against ECT2 and ECT2's customer. The insurance requirements in this section are separate and distinct from any other obligations of SUPPLIER contained herein, and neither the issuance of any insurance policy nor the minimum limits specified herein will be deemed to limit or restrict in any way SUPPLIER's liability arising under this AGREEMENT. SUPPLIER's obligations under this section shall survive the completion, termination, or cancellation of this AGREEMENT.

- 11 DELIVERY** - If delivery or completion dates cannot be met, SUPPLIER shall inform ECT2 immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of the PO unless ECT2 modifies the PO in writing. If any item is not received or if any element of the GOODS or SERVICES is not completed by the date specified, ECT2, at ECT2's option and without prior notice to SUPPLIER, may either approve a revised date or may cancel the PO and may obtain such GOODS or work elsewhere. SUPPLIER's sole remedy for a delay caused by ECT2 shall be an extension in the time for SUPPLIER's performance equal to the duration of ECT2's delay. SUPPLIER shall not be liable for damages resulting from SUPPLIER's failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes not caused by or within the control of SUPPLIER, lock-outs not caused by or within the control of SUPPLIER, fires, war or acts of God. **TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THE PO.**

SUPPLIER shall immediately give written notice of any actual or potential delays (but in no event later than fourteen (14) days prior to the agreed upon delivery date) thereof to ECT2. SUPPLIER will endeavor at its cost to mitigate the effects of such delay including expediting delivery. Any claim by SUPPLIER for adjustment because of a change in place and/or time of delivery shall be waived by SUPPLIER unless asserted in writing within fourteen (14) days after receipt by SUPPLIER of the request for change. SUPPLIER understands and agrees that if SUPPLIER makes any commitments or production arrangements in excess of the amounts set forth herein or in advance of the time necessary to meet ECT2 delivery schedule, it does so at its own risk, and ECT2 shall have no liability to SUPPLIER or any other party relating to same. Goods shipped in advance of the time required in this PO may, at ECT2 option, be returned to SUPPLIER at SUPPLIER's expense. ***ECT2 reserves the right to delay shipment of the Goods for up to thirty (30) days at no additional cost.*** If delivery is to be in accordance with ECT2's written releases in relation to a PO, SUPPLIER shall not procure, fabricate, assemble or ship any goods except to the extent authorized by ECT2 in such written releases.

- 12 TRANSPORTATION/PACKAGING** - Unless otherwise specified in a PO, all shipments originating in the USA and delivered to a location designated by ECT2 in a PO within the USA shall be FOB as designated on the PO. All Shipments originating outside the USA and delivered to a location designated by ECT2 in a PO in the USA shall be FCA as designated on the PO. In cases where freight costs are included in the material cost of the Goods, the shipping terms shall be CPT, named destination (as defined in Incoterms 2010). SUPPLIER shall make no provision for transportation insurance when ECT2 is in control of the shipment and responsible for the freight charges, unless specifically authorized to do so in writing. No insurance charges will be allowed unless authorized in writing by ECT2. Irrespective of the shipping terms, during the period that the Goods are in possession of SUPPLIER, all risk of loss or damage to the Goods shall be on SUPPLIER. Shipments must be packaged according to standard industry specifications, or if not covered in specifications, so as to permit efficient handling, provide adequate protection, and comply with requirements of carrier. Packing slips identifying the purchase order number, release number, and part number must accompany each shipment. SUPPLIER shall defend, indemnify and hold ECT2 harmless from any damages and costs incurred by ECT2 resulting directly or indirectly from improper packaging. Unless otherwise agreed to in writing, no charges will be allowed for packaging, boxing, crating, returnable containers, drayage, cartage, demurrage, or dunnage. SUPPLIER shall route shipment as instructed and shall consolidate all daily shipments to one destination on one bill of lading. Shipments sent C.O.D. without ECT2's prior written consent shall not be accepted and shall be at SUPPLIER's risk. SUPPLIER is instructed to ship only the quantity(ies) specified in the PO. However, any deviation caused by conditions of loading, shipping, packing, or allowances in manufacturing processes may be accepted by ECT2. If no allowance is shown, it shall be 0% (zero percent). ECT2 reserves the right to return, without liability, any overshipment at the SUPPLIER's expense. A copy of all shipping documentation shall be furnished to ECT2 immediately upon shipment and confirmed receipt.

- 13 INSPECTION; ACCEPTANCE; REJECTION** - All Goods and Services will be subject to inspection and rejection or acceptance by ECT2 during manufacture, after delivery at final destination and at such times as operating tests, if



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any, are required. ECT2 may also reject any Goods or Services found to be defective, nonconforming or failing to meet any of SUPPLIER's warranties. Upon rejection, ECT2 may return such goods to SUPPLIER, at SUPPLIER's sole risk and expense, for rework or replacement, in which case SUPPLIER agrees to repair onsite or ship conforming goods within fourteen (14) days of SUPPLIER's receipt of the rejected goods or such longer period of time as may be agreed to by ECT2 in writing. If ECT2 determines, in its sole discretion, that SUPPLIER is unable to rework or replace the Goods within the time required by ECT2, ECT2 may: (a) rework or have another supplier rework the Goods, the cost of such rework to be paid by SUPPLIER; or (b) return the Goods to SUPPLIER for full credit and obtain replacement goods from an alternate source, at SUPPLIER's expense; or (c) produce replacement goods, at SUPPLIER's expense. All Services found to be defective, nonconforming or failing to meet any of SUPPLIER's warranties shall be completely re-performed at SUPPLIER's expense. ECT2's rights of inspection and rejection are in addition to any other rights which it may have under Section 13 of these Terms and Conditions or otherwise.

- 14 **CONFIDENTIALITY** - All information or documentation (IP) disclosed to SUPPLIER by ECT2 shall be deemed confidential and SUPPLIER shall take all reasonable precautions to limit disclosure of confidential information to only those that need to know. This obligation of confidence shall survive termination of a PO in perpetuity. SUPPLIER has an affirmative duty to disclose any potential or known breach of this section to ECT2 within twenty-four (24) hours of becoming aware of the same.
- 15 **COMPLIANCE WITH LAWS** - SUPPLIER warrants it is familiar with all federal, state, and local laws and regulations, including applicable environmental, health, safety, and security rules and regulations, export control and foreign trade data regulations, and labor laws (LAWS) applicable to its performance with this AGREEMENT and a PO and agrees to comply with the same LAWS. SUPPLIER shall provide certification regarding its and its principal employees' compliance with LAWS upon request.
- 16 **NONWAIVER; REMEDIES** - Any waiver or failure of ECT2 to require strict compliance with the provisions of the AGREEMENT or PO in any respect must be in writing and shall not be deemed a waiver of ECT2's right to insist upon strict compliance thereafter. ECT2 retains all rights and remedies granted to it by operation of law, or in equity, in addition to those set forth herein.
- 17 **RISK OF LOSS** - Unless the PO expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the PO. Risk of loss shall not pass to ECT2 until goods called for in this PO actually have been received and accepted by ECT2 at the destination specified herein. SUPPLIER assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.
- 18 **ASSIGNMENT** - Neither this AGREEMENT, nor SUPPLIER's rights and obligations hereunder, are assignable by SUPPLIER without the prior written consent of ECT2. Any attempted assignment without the prior written consent of ECT2 shall be null and void.
- 19 **SEVERABILITY** - If any provision of this AGREEMENT is held to be invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated in accordance with applicable law.
- 20 **GOVERNING LAW**- The validity, interpretation, and performance of this AGREEMENT shall be governed by the laws of the Commonwealth of Massachusetts (MA), except the UCC shall be interpreted in accordance with the United States Uniform Commercial Code. The provisions of the United Nations Convention on Agreements for the International Sale of Goods are expressly disclaimed and shall not apply.