

## **Metagenics - Purchase Order Terms and Conditions**

These terms and conditions apply unless You have entered into an executed agreement governing the supply of the goods and services (Executed Agreement) in which case the terms and conditions of the Executed Agreement shall apply.

### **1. Definitions**

The following definitions shall be used for the purpose of interpreting the Purchase Order and these Purchase Order Terms and Conditions (together, the Purchase Order):

Confidential Information includes all trade secrets and financial, marketing and technical information, ideas, concepts, know-how, technology, processes and knowledge which is confidential or of a sensitive nature to Metagenics or any Related Company, but excludes that which is in the public domain.

**Defective** means that the Goods:

- a. have an error, defect or malfunction;
- b. are not fit for purpose or of merchantable quality;
- c. do not conform with a sample or test good provided by You;
- d. otherwise do not comply with the requirements of this Agreement or a Purchase Order.

**Goods** means the goods You are required to supply under this Agreement and any Purchase Order.

**Metagenics/Us** means Metagenics (Aust) Pty Ltd and Metagenics (NZ) Pty Ltd.

**Related Company** means a related body corporate of Metagenics as defined in the Corporations Act 2001 (Cth).

**Purchase Order** has the meaning given in Clause 2 and it is an agreement between Metagenics and You comprised of the Purchase Order Form, these Purchase Order Terms and Conditions, any special conditions and attachments. The Purchase Order supersedes all previous communications and negotiations between the parties, unless you have an Executed Agreement with Us.

**Services** means the services specified in the Purchase Order.

**Supplier/You** means the person (including an individual, firm or corporate entity) named in the Purchase Order who is bound to supply and/or deliver the Goods or Services.

### **2. Purchase Orders**

- 2.1 **Term of Purchase Orders**  
Each Purchase Order continues for the period stipulated in a Purchase Order or until all Goods and Services have been supplied, and all other requirements of Metagenics are met under that Purchase Order.
- 2.2 **Acceptance of Purchase Order**  
A Purchase Order will be deemed accepted by You if You do not notify Metagenics to the contrary within 5 business days after receiving the Purchase Order.
- 2.3 **Priority of Documents**  
In the event of any conflict, ambiguity or inconsistency between the provisions of a Purchase Order and this Agreement, the terms of the Purchase Order shall prevail for the purposes of that Purchase Order.
- 2.4 **Variation to Purchase Orders**  
Variations to Purchase Orders may be requested by providing written notice to the other party detailing the requested variations. The parties agree to promptly respond to a notice for variation. Any variation request will not be binding on the other party until accepted in writing by both parties.

### **3. Goods and Services**

- 3.1 **Your Performance Requirements**  
You must, and must ensure that Your personnel, Subcontractors and their personnel:
  - a. Perform the Services:
    - i. In accordance with this Purchase Order for those Services;
    - ii. With due care and skill, in the absence of any specific service levels specified in the Purchase Order, in accordance with the level of service generally expected in a commercial arrangement for the provision of services of the particular type; and
  - b. Unless stated otherwise in the Purchase Order, provide all equipment necessary to carry out the Services;
  - c. Provide all Goods required to be supplied under each Purchase Order and warrant that those Goods:
    - i. comply with all requirements of the Purchase Order, including any description of the Goods;
    - ii. are fit for the purposes for which they are intended;
    - iii. are new, or an acceptable quality and are not Defective;
    - iv. if Metagenics has supplied manufacturing drawings to You, that those Goods are manufactured and supplied strictly in accordance with such drawings
    - v. are free from all liens, charges and encumbrances of any kind at the time title in the Goods passes to Metagenics.
- 3.2 **Review of Deliverables**  
Metagenics may review all Goods and Services supplied within a reasonable time after they are supplied to confirm whether they comply with this Purchase Order for a period of 12 months from the date of delivery of those goods (Warranty Period). Where a Service does not comply or the Good is Defective, unless otherwise provided in a Purchase Order, Metagenics will give You (at Your expense) a reasonable opportunity (not to exceed 30 days) to rectify, repair or replace the Goods and/or Services, as appropriate, before Metagenics review it again. If, at the end of that time, the Goods and/or Services still do not comply with this Agreement, Metagenics may, without prejudice to Metagenics' other rights:
  - a. Accept the Goods and/or Services subject to a reasonable reduction in fees;
  - b. Reject the Goods supplied, in which case You will, within 7 days after receiving notification of such rejection, without prejudice to Metagenics' other rights and remedies;

- i. collect the Goods from Metagenics at Your expense;
  - ii. refund to Metagenics all amounts paid by Metagenics in respect of the Goods; or
  - iii. accept the Goods and/or Services on terms acceptable to Metagenics.
- 3.3 **Failure to provide Goods or Services on time**  
Where You fail to supply the Goods or commence supplying the Services within the timeframes stipulated in the Purchase Order, Metagenics may, without prejudice to Metagenics' other rights and remedies, at its option either:
    - a. terminate the Purchase Order immediately if Metagenics, acting reasonably, deems the supply of Goods and or Services to be time critical;
    - b. terminate the Purchase Order in accordance with clause 10 if You fail to remedy the breach within 7 days after notice by Metagenics;
    - c. notify You of a new time for delivery or collection of the Goods or commencement of the Services.
  - 3.4 **Title in Deliverables**  
Except as specified in relation to Intellectual Property Rights in clause 6, title in Deliverables passes to Metagenics on delivery.

### **4. Your Personnel**

- a. You warrants that all Personnel, whether of the Supplier or a Subcontractor of the Supplier, who provide the Service are professional, punctual and diligent and possess and will use the specific skills, qualification and experience required for the Services.
- b. If, in Metagenics' opinion, the performance of any of Your or Your Subcontractor's Personnel is unsatisfactory for any reason, Metagenics may, acting reasonably and in its absolute discretion notify You that it requires You to remove such personnel from providing the Services.

### **5. Fees and Expenses**

- 5.1 **Fees**  
The Services may be charged on a fixed fee, time charge or other basis, as specified in the Purchase Order.
- 5.2 **Expenses**  
Unless otherwise stated in the Purchase Order, Metagenics will only reimburse expenses incurred by You that are approved by Metagenics in writing before they are incurred and, are in accordance with the relevant Purchase Order.
- 5.3 **Payment**
  - a. Metagenics will pay You the amount due under an invoice within 60 days after the date of receipt of a correctly rendered invoice.
  - b. If Metagenics disputes all or part of an invoice, Metagenics may withhold payment of the disputed amount but must pay the undisputed amount. Metagenics will provide to You a notice specifying the reason for withholding payment as soon as practicable.
- 5.4 **Taxes**  
Subject to this clause, the cost of all taxes, duties and charges imposed or levied in connection with this Agreement must be borne by You. Each consideration or payment obligation in their Agreement is calculated to include an amount on account of the liability of the party making the Supply for GST in respect of the Goods and Services contemplated in this Agreement and each Purchase Order.

### **6. Intellectual Property**

- 6.1 **General**
  - a. You agree that all things (including all intellectual property) created by You in connection with provision of the Services will vest in and remain the property of Metagenics. By this agreement, You assigns to Metagenics all rights in all things created during provision of the Services. You undertakes to execute any further documentation that may be necessary to vest intellectual property in Metagenics or have Metagenics registered as the owner of such intellectual property.
    - (b) You will, if requested, sign an unconditional and irrevocable waiver of any moral rights they may have in any works created in the course of providing the Services.
- 6.2 **Intellectual Property Warranty**  
You warrant that in performing Your obligations under each Purchase Order, including in creating, developing and supplying the Services, You will not infringe the Intellectual Property Rights of any person.

### **7. Indemnity**

You indemnify Metagenics against all losses, damages, liabilities, expenses and costs (on a full indemnity basis) including the costs of defending or amounts payable pursuant to a settlement, suffered or incurred by Metagenics and any Personnel of Metagenics as a result of any breach of any Purchase Order or negligence in relation to any Purchase Order by You, any of its subcontractors, or any of Your Personnel or any of its Subcontractors.

### **8. Insurance**

- You must:
- a. where relevant having regard to the natures of the Services, maintain from the Commencement Date until at least 3 years after expiry or termination of this Agreement, professional Indemnity insurance with:
    - i. a limit of no less than \$10 million for any one claim and in the aggregate.
  - b. maintain from the Commencement Date until the expiry or termination of this Agreement:
    - i. public liability insurance of at least \$10 million for any one claim and in the aggregate;
    - ii. workers' compensation as required by law; and
    - iii. any additional or increased insurance or other insurance required as specified in Schedule 2.
  - c. maintain the above insurances with a reputable insurer that is reasonably satisfactory to Metagenics.

You will provide copies of certificates of currency within 7 days of

a request by Metagenics.

### **9. Termination**

- a. Metagenics may by notice in writing terminate this
- b. Agreement with immediate effect if You:
- c. commit a serious or persistent breach or non-observance of this Agreement;
- d. are unable to or do not, for any reason whatsoever, adequately provide, in the reasonable opinion of Metagenics, the Goods or Services in accordance with the terms of this Agreement; or
- e. are guilty of conduct which in the reasonable opinion of Metagenics might tend to injure the reputation or business of Metagenics.

### **10. Subcontracting**

- a. You may not engage any Subcontractor or arrange for another person to perform or discharge any of Your obligations under the Purchase Order without first obtaining the prior written consent of Metagenics.
- b. You will not be relieved of any of your liabilities or obligations to Metagenics under the Purchase Order by the appointment of any Subcontractor and You remain liable for the performance of Your obligations under the agreement and all Purchase Orders.

### **11. Privacy and Confidentiality**

Except as authorised or required by this Purchase Order, You will not use or disclose any Confidential Information which may come to the knowledge of You in the performance of the Services under this agreement and will keep with complete secrecy all Confidential Information entrusted to You and will not use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to Metagenics. The restriction in this Clause 11 will apply during and after termination of this Purchase Order but will cease to apply to information which may come into the public domain, other than as a result of the breach by You of this agreement or as a result of the breach by any other person of any obligation of confidentiality to which such person is subject.

You must in relation to Personal Information:

- a. use and disclose it only for the purpose of performing Your obligations under this Agreement;
- b. not do or omit to do anything which would cause Metagenics to contravene the Privacy Laws or the Metagenics Privacy Policy;
- c. not use or disclose it for sale, profit or any other benefit.

### **12. Applicable Law**

The Purchase Order and the rights and obligations of the parties hereto shall be construed in accordance with and be governed by the laws applicable in the State of Queensland. Each of the parties agrees that any legal action or proceedings with respect to its obligations hereunder shall be brought in the State of Queensland.

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