

Terms & Conditions of Purchase

Reference: VCCC-IMS-L2-001 Procurement Procedure

Copyright Cell Therapies Pty Ltd

Prepared by: S.Galbraith

Reviewed by: R.Rossi

Approved by: S.Straub

STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

In these Conditions of Purchase Order ("Conditions"), unless the context requires otherwise:-

CTPL means Cell Therapies Pty Ltd (ABN: 15 100 285 916)

Completion Date means the date (and time, if applicable) specified in the Purchase Order as the 'Date Required' by which the Services are to be performed by the Supplier (time being of the essence) or if no date is specified, within a reasonable time having regard to normal commercial practice.

Supplier means the Supplier specified in the Purchase Order.

Delivery Date means the date (and time, if applicable) specified in the Purchase Order as the 'Date Promised' by which the Goods are to be supplied to CTPL by the Supplier (time being of the essence) or if no date is specified, within a reasonable time having regard to normal commercial practice.

GST means the goods and services tax imposed under the A New Tax System (Goods & Services Tax) Act 1999. Words defined in that Act have the same meaning in these Conditions.

Goods means the goods (if any) specified in the Purchase Order.

Purchase Order means the Purchase Order to which these Conditions apply.

Services means the services (if any) specified in the Purchase Order.

Site means the location nominated by CTPL as the shipping address for the Goods and/or the location of the supply of the Services as specified in the Purchase Order.

2. SERVICE LEVEL AGREEMENT AND QUALITY AGREEMENT

2.1. These Terms and Conditions incorporate by reference the terms of the CTPL Service Level Agreement (if required) and the Quality Agreement (if required) (together referred to as "the Agreements"), for the Provision of Goods and Services to the extent that the Agreements are inconsistent with these Terms and Conditions, the Terms and Conditions in the Agreements prevail. Terms which are capitalised but not defined in these Terms and Conditions are defined in the Agreements. These Terms and Conditions together with the Agreements set out the entire agreement between the Supplier and CTPL with respect to the supply of the relevant Goods or Services.

3. EXISTING CONTRACT

3.1. If at the time the Goods or Services are ordered by CTPL from the Supplier there is already a contract in existence between CTPL and the Supplier which is signed by both parties which expressly governs the supply of such Goods or Services, then to the extent of any inconsistency, that contract will prevail and apply to the supply of Goods and Services to the exclusion of these Terms and Conditions.

4. FORMATION OF CONTRACT

4.1. A Purchase Order issued by CTPL to the Supplier constitutes an offer by CTPL to engage the Supplier to supply the Goods and/or the Services described in the Purchase Order on the terms set out in the Purchase Order and these Conditions.

4.2. A contract for the supply of the Goods and/or the supply of the Services ("Contract") is formed between CTPL and the Supplier when the Supplier:

- a) Communicates in writing with CTPL, the content of which confirms or implies acceptance; or
- b) Dispatches the Goods and/or commence performance of the Services.

4.3. The Contract consists solely of the Purchase Order. No terms or conditions sought to be imposed by the Supplier before or after placement of the Purchase Order (including terms incorporated into any tender, offer, counteroffer or proposal made by the Supplier) will apply, unless expressly accepted in writing by CTPL.

5. SUPPLY OF GOODS AND/OR SERVICES

5.1. The Supplier will supply to CTPL the Goods by the Delivery Date and/or the Services by the Completion Date.

5.2. The Supplier must comply with the terms of this Contract.

5.3. The supplier must create a safe and healthy workplace and comply with Australian work health and safety legislation and CTPL requirements at all times.

5.4. The supplier must comply with Australian environmental legislation and requirements.

5.5. The supplier must comply with Australian information security legislation and CTPL system requirements.

5.6. Goods supplied by the Supplier must:

- a) Comply with the specification or description in the Purchase Order;
- b) Be new (unless otherwise specified in the Purchase Order) and of recent origin;
- c) Be free from defects in design, manufacture and assembly;
- d) Be of merchantable quality and fit for the purpose for which they are ordinarily acquired;
- e) When used properly, be safe and not endanger health;
- f) Be produced in an environmentally friendly manner; and
- g) Otherwise be in accordance with all relevant standards, laws and regulations.

5.7. Services supplied by the Supplier must:

- a) Comply with the specification or description in the Purchase Order;
- b) Be performed with due skill, care and attention in a safe, environmentally friendly and diligent manner;
- c) Be performed by personnel who are qualified, licensed, competent and experienced in providing the Services and by the key personnel (if any) specified in the Purchase Order;
- d) Be performed in a timely manner and in accordance with the program or timetable, if any, specified in the Purchase Order (time being of the essence); and
- e) Be performed in accordance with all applicable laws, codes and standards.

5.8. All documentation (including drawings and reports) supplied by the Supplier in relation to the Goods as part of the Services shall be accurate, comprehensive and complete.

Terms & Conditions of Purchase

Reference: VCCC-IMS-L2-001 Procurement Procedure

Copyright Cell Therapies Pty Ltd



6. PRICE AND PAYMENT

- 6.1. Unless otherwise specified in the Purchase Order:
- The Price is fixed and not subject to rise and fall for labour or material costs or any other adjustment; and
 - The Price is inclusive of:
 - all necessary packaging and delivery costs;
 - all excise, duties or taxes (including related penalties and any government-imposed greenhouse gas emissions trading scheme or greenhouse gas emissions reporting obligation) levied or assessed by government, or otherwise payable, in respect of the Goods, except for GST;
 - All charges for supply of the Goods (and no additional charges will be raised for inspection, testing, packaging, delivering, insurance or equipment); and
 - All amounts payable for the use of intellectual property (including licenses) and moral rights consents.
- 6.2. Subject to these Conditions, CTPL will pay the Price to the Supplier for supply of the Goods or performance of the Services. Payment will be made by electronic funds transfer.
- 6.3. If any supply made pursuant to a Purchase Order is a Taxable Supply, CTPL will pay to the Supplier the GST in respect of that Taxable Supply.
- 6.4. The Supplier must submit to CTPL a valid tax invoice specifying:
- The relevant Purchase Order number;
 - The Goods supplied and/or the Services performed as at the date of the invoice;
 - The Site and date of performance of the Services and/or delivery of the Goods;
 - Where Services are charged on a time basis, the actual hours spent by individual personnel performing the Services; and
 - Such other particulars as are necessary to enable CTPL to obtain input tax credits for the amount of GST payable.
- 6.5. By submitting an invoice to CTPL, the Supplier warrants that:
- The specified Goods and/or Services have been supplied in accordance with the Contract; and
 - The amounts specified in the invoice are accurate and CTPL is entitled to payment of the amount claimed.
- 6.6. CTPL will make payment to the Supplier within 30 days of receipt of the invoice.
- 6.7. CTPL may deduct and set off from any moneys due to the Supplier any sum which is payable by the Supplier to CTPL.

7. DELIVERY OF GOODS

- 7.1. If specified in the Purchase Order, CTPL will arrange for the Goods to be collected from the Supplier, in which case delivery is taken to occur upon commencement of loading of the Goods onto the transport arranged by CTPL.
- 7.2. If specified in the Purchase Order, the Supplier must, at its own cost and risk, deliver the Goods by the Delivery Date. Deliveries are to be made at the time and at the Site specified in the Purchase Order, unless otherwise agreed in writing. Time is of the essence for delivery of the Goods.
- 7.3. If clause 7.2 applies, delivery is taken to occur upon completion of offloading by the Supplier.
- 7.4. The Supplier must, at its own cost, ensure the Goods are adequately and securely packed to avoid damage or destruction during transit including marking and delivering the Goods.
- 7.5. If clause 7.2 applies, where Goods are lost or damaged in transit, the Supplier will replace them at no cost to CTPL.
- 7.6. The Supplier shall provide sufficient documents to enable CTPL to identify the nature and quantity of Goods delivered including a material safety data sheet in accordance with, and if required by, the National Code of Practice for the Preparation of Material Safety Data Sheets. All delivery documents must include a delivery docket which must state:
- The Purchase Order number;
 - A description of the Goods delivered; and
 - The quantity of Goods.
- 7.7. Title in the Goods passes to CTPL upon the earlier to occur of delivery in accordance with the Contract or payment by CTPL for the Goods.
- 7.8. Unless otherwise specified in the Purchase Order, risk in the Goods is taken to pass at the time of delivery in accordance with the Contract.

8. INSPECTION, TESTING AND DEFECTS

- 8.1. CTPL may inspect and test the Goods. Inspection and testing may be undertaken after the Goods are unpacked by CTPL or when Goods are installed into CTPL's plant or premises. If, after an inspection or test, the Goods are found to be defective or otherwise fail to comply with these Conditions, CTPL may (without prejudice to its rights) return the Goods to the Supplier at the Supplier's expense. Upon return, the Supplier shall reimburse CTPL for the Price paid by CTPL for the Goods and any costs incurred by CTPL in returning the Goods to the Supplier. These activities will be conducted within 7 days of receipt.
- 8.2. If any Goods are returned under clause 8.1, risk will revert to the Supplier upon return and title will revert to the Supplier upon reimbursement of the Price by the Supplier.
- 8.3. Satisfactory inspection and/or testing of the Goods does not:
- Release the Supplier from liability in relation to any inherent defects or inadequacies in the Goods which were not actually identified during inspection or testing;
 - Release or waive warranties given by the Supplier in relation to the Goods; or
 - Otherwise relieve the Supplier of any of its obligations to perform the Contract.
- 8.4. The Supplier must ensure that all warranties applicable to the Goods are transferred to CTPL.
- 8.5. If in the reasonable opinion of CTPL the Services performed by the Supplier do not meet the requirements of the Contract, the Supplier shall upon request by CTPL promptly re-perform the deficient part of the Services at its own cost. If the Supplier fails to do so, CTPL may have the deficiency rectified by others and recover the costs of doing so from the Supplier.
- 8.6. Nothing in this clause reduces or otherwise affects the Supplier's obligations or CTPL's rights under this Contract or the law.

9. COMPUTER SOFTWARE

- 9.1. Where the Goods incorporate computer software, the Supplier warrants that:
- the software is free from malware, trojan horse, bugs, worms or any other defects that are intended to, or do, damage or interfere with the proper working of the software;
 - any software maintenance, upgrade, patch or fix supplied by the Supplier for the software will comply with subparagraph (a) and will be compatible with the existing version of the software; and
 - CTPL's use of the software will not infringe the intellectual property or moral rights of any person.

Terms & Conditions of Purchase

Reference: VCCC-IMS-L2-001 Procurement Procedure

Copyright Cell Therapies Pty Ltd



10. WORKING ON SITE

- 10.1. The Supplier is deemed to have examined the CTPL premises and its surrounds and accepted responsibility for any additional costs, losses and expense arising out of the physical conditions and characteristics of the premises.
- 10.2. The Supplier (and any employee, agent or subcontractor of the Supplier) must:
- Complete all relevant inductions as required by CTPL prior to commencing performance of Services at the CTPL premises;
 - At all times while performing the Services at the Site, comply in full with the Site work Conditions including obtaining a visitor pass before entering the premises;
 - Use its best endeavours not to interfere with the CTPL's activities; and
 - Ensure that it does not leave rubbish when delivering the Goods and/or performing the Services.

11. INSURANCE

- 11.1. Unless otherwise specified in the Purchase Order, the Supplier must hold insurances a prudent supplier of the Goods and/or Services would hold including:
- Insurances to cover physical loss or damage to the Goods;
 - Public liability insurance of not less than \$10 million;
 - Workers compensation insurance as required by law; and
 - Any other insurance reasonably required by CTPL.

12. WARRANTIES

- 12.1. The Supplier warrants and represents to CTPL that:
- It has unencumbered title to all Goods;
 - Use of the Goods by CTPL will not infringe the intellectual property, moral or other rights of any third party;
 - It, and any person performing the Contract on its behalf, holds and will maintain all requisite licenses, permits and authorities relevant to the supply of the Goods and/or Services;
 - It holds all relevant import licenses, consents or authorities necessary for performance of the Contract including EPA and OHS related licenses; and
 - All performance data, measurements and specifications quoted in brochures, quotations or tenders are accurate within the tolerances (if any) specified in those documents.

13. INDEMNITY

- 13.1. The Supplier shall indemnify CTPL against any and all claims, liabilities, losses, damages or penalties in respect of:
- Any loss of or damage to real or personal property owned by CTPL or any other party; and/or
 - Any personal injury or death sustained by any person,
- arising in any way out of the Supplier's performance of the Contract or any breach by the Supplier of its obligations under the Contract.
- 13.2. Every indemnity, exemption, limitation, defence, immunity or other benefit contained in the Contract to which CTPL is entitled will also be held by CTPL on trust for the benefit of, and will extend to protect, each of CTPL's personnel and CTPL Group members.
- 13.3. Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives expiry or termination of the Contract.

14. INTELLECTUAL PROPERTY

- 14.1. Unless otherwise specified in the Purchase Order, all intellectual property produced by the Supplier under the Contract shall vest in CTPL upon creation. If necessary, the Supplier must (and ensure its relevant personnel) assign or transfer all intellectual property to CTPL. The Supplier must (and ensure its relevant personnel) sign all documents and do anything else required to give effect to the assignment or transfer or moral rights consents under clause 14.1 or 14.2 (as applicable). CTPL grants to the Supplier an irrevocable and payment-free license to use the intellectual property for the purpose of performing the Services. The Supplier grants to CTPL an irrevocable, perpetual, worldwide and payment free license to use any intellectual property not vested in CTPL that is necessary for CTPL to have the benefit of the supply provided under the Contract.
- 14.2. The Supplier (if an individual) consents and must procure the consent of any other individual involved in producing any intellectual property referred to in this clause 14, to any act or omission by CTPL in using the intellectual property that might otherwise breach the individual's moral rights.
- 14.3. The Supplier indemnifies CTPL against any claims made by third parties in respect of the use of intellectual property in connection with any Goods and/or Services supplied under the Contract.

15. CONFIDENTIALITY

- 15.1. Subject to clause 15.2, the Supplier must not, without CTPL's approval, disclose Confidential Information to any third party or use or reproduce Confidential Information other than strictly for the performance of the Contract.
- 15.2. Clause 15.1 shall not apply to the extent the Confidential Information is:
- In the public domain in the form it was disclosed or made available by or on behalf of CTPL (otherwise than as a result of breach of the Contract); or
 - Required to be disclosed by Law (provided the Supplier first advises CTPL of the legal requirement for disclosure and allows CTPL the opportunity to seek orders preventing disclosure).
- 15.3. The Supplier must establish and maintain effective security to safeguard the Confidential Information and to keep Confidential Information under its control.
- 15.4. On termination or completion of the Contract, the Supplier must return Confidential Information to CTPL.
- 15.5. In this clause, "**Confidential Information**" means all documents (including drafts and notes), reports, data or information of any kind, in any form, whether:
- Communicated orally or in writing between CTPL and the Supplier in connection with the Contract; or
 - Created or generated by the Supplier in connection with the Contract,
- and includes (but is not limited to) financial information, trade secrets, business affairs, suppliers, operations data, drawings, designs, technical information and any other information relating to CTPL's business.
- 15.6. The Supplier must not make public announcements in relation to this Contract without CTPL's consent.

Terms & Conditions of Purchase

16. REPORTING

16.1. The Supplier must (at its cost) provide, at CTPL's request:

- a) Progress reports setting out, in such detail as CTPL requests, the different stages of design, manufacture and testing of the Goods and/or Services;
- b) A detailed program for the projected supply of the Goods and/or Services;
- c) Any information requested for the audit of the Supplier's personnel for compliance with fatigue management requirements contained in any applicable State or Commonwealth legislation.

17. TERMINATION

17.1. CTPL may terminate the Contract immediately by written notice if:

- a) The Supplier is unable to pay its debts as and when they fall due;
- b) A receiver, administrator or liquidator is appointed, or a meeting of creditors is called, in relation to the Supplier or the Supplier enters into an arrangement with its creditors or otherwise takes advantage of laws in force in relation to insolvent debtors;
- c) The Supplier ceases to carry on business;
- d) There is a change in control (as that term is defined in the Corporations Act 2001 (CT) in relation to the Supplier); or
- e) The Supplier or its representatives engage in conduct that, in the reasonable opinion of CTPL, endangers health and safety.

17.2. If either party breaches an essential term of the Contract, the other party may give notice requiring the breach to be remedied within 14 days. If the breach is not remedied, the party giving the notice may terminate the Contract.

17.3. CTPL may, by notice in writing, terminate the Contract at any time. Upon receipt of a notice of termination under this clause, the Supplier must cease performance of the Contract and take all available steps to minimize loss arising from termination. CTPL will pay the Price for work completed up to the date of termination. CTPL will not be liable for any other damages or compensation for the termination.

17.4. Termination of the Contract does not affect accrued rights or remedies.

18. DISPUTE RESOLUTION

18.1. The parties will negotiate to resolve any disputes. If a dispute cannot be resolved within 28 days of first being notified, either party may commence proceedings.

19. ETHICAL BUSINESS CONDUCT

19.1. Each party warrants that neither it nor any person acting on its behalf:

- a) Has made or offered;
- b) Proposes to make or offer; or
- c) Has caused or proposes to cause any third party to make or offer, with respect to the matters that are the subject of the Purchase Order, any payment, gift, promise or other advantage, whether directly or indirectly, including (without limitation) through affiliates or representatives (including representatives of the intended recipient), to or for the use of any public official, where such payment, gift, promise or advantage would violate:
 - i. The applicable laws of the country in which the activities under the Purchase Order are taking place;
 - ii. The laws of the country of incorporation of such party;
 - iii. The principles described in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; or
 - iv. The laws of any other country.

19.2 Each party warrants that neither it nor any person acting on its behalf:

- a) has made, or proposes to make, any payment in Australia to, by the order of, or on behalf of a person or entity sanctioned by the Reserve Bank of Australia pursuant to regulation 8(1)(a) of the Banking (Foreign Exchange) Regulations 1959 (CT); or
- d) Has breached, or proposes to breach, the Charter of the United Nations Act 1945 (CT) or regulations made under that Act.

19.2. The obligations in this clause 19 are continuing and survive the completion, termination or expiry of this Contract.

20. GENERAL

20.1. The relationship between CTPL and the Supplier is one of principal and independent contractor. Nothing in this Contract shall create a relationship of joint venture, trust, employment, agency or partnership. The Supplier does not have authority to contract with third parties on behalf of CTPL or to otherwise bind CTPL, unless CTPL's prior written consent is provided.

20.2. The Supplier must not subcontract, assign or novate any rights or obligations under the Contract without the prior written consent of CTPL. The Supplier hereby consents to CTPL assigning or novating any or all of its rights or obligations under this Contract at any time to any person.

20.3. The Supplier acknowledges that CTPL may contract with any other party to supply like goods or services and no exclusive relationship exists or is to be implied by the Contract.

20.4. Any variation to the Contract must be approved by CTPL's procurement contact named in the Purchase Order.

20.5. The Supplier acknowledges and agrees that it will not register any security interest in relation to this Purchase Order against CTPL on any register maintained under the Personal Property Securities Act 2009 (CT).

20.6. This Contract is governed by the laws of Victoria and each party submits to the non-exclusive jurisdiction of Courts of that state.

20.7. Neither party is taken to have waived any right under the Contract unless the waiver is given in writing and expressed to be a waiver.

20.8. Any notice given under the Contract must be given in writing to the address specified in the Purchase Order in the case of the Supplier and to the following address in the case of CTPL:

Level 9, 305 Grattan St, Melbourne VIC 3000

20.9. The Contract constitutes the entire agreement between CTPL and the Supplier in relation to its subject matter.