

**ENTYCE FOOD INGREDIENTS PTY. LTD.**

**SUPPLIER TERMS AND CONDITIONS FOR GOODS & SERVICES**

Referenced on Purchase Orders and displayed at our website [www.entyce.com.au](http://www.entyce.com.au)

Entyce Food Ingredients Pty. Ltd. (ABN: 99120104083) of Level 3, 42 Lakeview Drive Caribbean Park, Scoresby VIC 3179 Australia (ENTYCE) requires that the supplier or contractor (the Supplier) specified in an ENTYCE purchase order (the Order) supply ENTYCE with the goods (the Goods) and/or services (the Services) specified in the Order and the Supplier has agreed to provide the Goods and/or Services on the following terms and conditions:

## **1. Contract**

A. The Order is ENTYCE's offer to the Supplier for the Supplier to supply the Goods and/or the Services described in the Order to ENTYCE on the terms and conditions contained in this document to the exclusion of all terms and conditions stated by the Supplier in providing a quotation or otherwise. Acceptance of the Order by the Supplier shall constitute a binding contract between ENTYCE and the Supplier to supply the Goods and/or the Services specified in the Order on the terms and conditions contained in this document.

B. The following documents shall apply to, and be deemed to be incorporated in, a contract formed by acceptance of the Order (the Contract):

i. The Order;

ii. These terms and conditions;

iii. All documents attached to the Order or incorporated into the Order by reference with ENTYCE's written consent.

C. If the Supplier is unwilling or unable to accept the offer made by ENTYCE in the Order under the terms and conditions set out in this document, the Supplier must immediately contact ENTYCE and advise in writing of any variations it requires emailed to: [admin@entyce.com.au](mailto:admin@entyce.com.au). If the Supplier proceeds with the supply of the Goods and/or the Services without first requesting and obtaining informed written consent from an authorized representative of ENTYCE to a variation in accordance with this clause 1 (C) then it shall be deemed to have accepted the terms and conditions set out in this document.

D. If a written agreement exists between the Supplier and ENTYCE for the supply of the Goods and/or the Services, the terms and conditions of the written agreement shall take precedence over these contractual terms and conditions to the extent of any inconsistency.

E. By entering the Contract, ENTYCE and the Supplier acknowledge that the terms set out in this document express the entire understanding and agreement between ENTYCE and Supplier and there have been no representations made by either party to the other except those expressly set forth herein.

F. No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in writing by duly authorised representatives of both parties.

## **2. Price**

A. The price of the Goods and/or the Services supplied by the Supplier to ENTYCE pursuant to an Order is the price or prices specified in the Order (Price) in Australian Dollars (AUD) unless an alternative currency is otherwise stated.

B. The Price includes all applicable packaging, freight and insurance charges and all taxes, duties, charges, levies and fees payable on or in respect of the Goods and/or the Services, with the exception of GST, unless specified to the contrary in the Purchase Order or pre-existing written agreement.

## **3. Invoices & Payment**

A. For Australian and International supply of Goods and/or Services, invoices must be forwarded to ENTYCE within seven (7) days of delivery of the Goods and/or provision of Services and shall always quote ENTYCE's Purchase Order number. Invoices of the Supplier shall comply with any applicable law and shall clearly state the terms of payment in a manner consistent with the Order. Payment of the Price by ENTYCE to the Supplier will not be made until an invoice complying with this clause 3(A) has been received by ENTYCE. Any invoices provided by a Supplier outside of the financial year in which the goods and/or services were delivered will incur additional fees, costs and charges for audit, accounting, administrative and ancillary costs incurred directly or indirectly by Entyce due to the failure of the Supplier to maintain and adhere to proper and timely financial reporting requirements for the account of the Supplier to either reimburse or set off against future invoices.

B. ENTYCE may withhold disputed amounts until the dispute has settled subject to ENTYCE giving written notice to the Supplier for the reasons of the dispute. ENTYCE is entitled to set off against monies otherwise due to the Supplier any monies that may be due or owing by the Supplier to ENTYCE.

C. Terms of payment shall be within 60 days from the end of the calendar month in which the invoice is dated unless otherwise specified in the Order or agreed to between the parties through mutual written consent.

## **4. Delivery**

A. Goods shall be sold to ENTYCE for its import shipments using international commercial terms published as Incoterms® 2020 - ICC - International Chamber of Commerce (iccwbo.org) Free on Board (FOB), Cost and Freight (CFR), Delivered Duty Paid (DDP) or for domestic sales Ex Works (EXW) and Free into Store (FIS.) with the relevant Incoterm 2020 and/or ship via/to destination being specified on the Order.

B. Delivery of an Australian order FIS shall be completed when the Goods effectively pass into the ship to premises specified in the Order and an authorised officer or agent of ENTYCE has signed accepting the Goods. Any additional or special requirements by ENTYCE as to delivery of the Goods specified in the Order shall be deemed to be a condition of the Order.

C. Delivery shall be made no later than the date specified in the Order. The Supplier must perform the Services for ENTYCE by the date/s specified in the Order. If delivery or performance is not made in this time, in strict compliance with all the terms, conditions and other requirements of the Order, the Order may be cancelled, in whole or in part, by ENTYCE at ENTYCE's election.

D. Delivery shall be effected to ENTYCE at its election by one or more shipments. If after inspection of the Goods and/or the Services (and irrespective of whether or not an officer or agent of ENTYCE has signed an acceptance of the Goods and/or the Services) it is found that the Goods supplied or the Services carried out are not as specified in the Order and/or there is a breach of any warranty by the Supplier under the Contract and/or the Goods and/ or the Services are found (in the opinion of ENTYCE held in good faith) to be unsatisfactory, spoilt, defective and/or of inferior quality and/or otherwise fail to meet strictly the requirements of the

Order, ENTYCE (without prejudice to any other rights it may have) may, although risk may have passed to ENTYCE or delivery may have been completed:

(i) Elect not to pay the Price (and, to the extent it has already paid the Price, obtain an immediate refund of it) or set off against future orders; and/or

(ii) Attempt, at the risk and expense of the Supplier, to rectify any or all deficiencies in the Goods and/ or the Services; and/or

(iii) Require the Supplier to resupply the Goods and/or the Services at the Supplier's cost; and/or

(iv) Reject the Goods by notifying the Supplier of this rejection. Upon rejection the Supplier shall, at its expense, immediately remove the Goods from ENTYCE's premises or from its 3<sup>rd</sup> party logistics site, failing which ENTYCE may, at the Supplier's risk and expense return the Goods to the Supplier or, where the Goods are not in a suitable condition (in the opinion of ENTYCE held in good faith) to be returned, destroy them at the Supplier's expense.

E. The Supplier shall promptly (and in any event no later than 24 hours from receipt of ENTYCE's request) and at the Supplier's cost, attend at the place where the Goods were delivered and/or the Services were provided and/ or such other place as is reasonably directed by ENTYCE upon ENTYCE's request for the purposes of:

(i) Rectifying a non-compliance of the Goods and/or the Services with the Contract; and/or

(ii) Assisting ENTYCE to determine if an issue ENTYCE is experiencing or anticipates that it may experience is caused or contributed to by a non-compliance of the Goods and/or the Services; and/or

(iii) Sorting through Goods to ascertain which Goods are defective and/or remove Goods that are defective; and/or

(iv) Assisting ENTYCE to ensure that its supply chain and production lines continue to run despite a non-compliance of the Goods and/or the Services with the Contract.

(F) In this Clause 4, references to removal, return and destruction expenses include (but are not limited to) the cost of packing, storage, transport and handling where applicable.

(G) Time is of the essence in the performance of the obligations under the Contract. The Supplier shall immediately notify ENTYCE as soon as it becomes aware of a potential delay together with the circumstances and propose a revised delivery date which ENTYCE may elect to agree to or not in its absolute discretion.

(H) The Supplier acknowledges that ENTYCE may terminate the Contract if the Supplier does not provide the Goods and/or the Services by the date/s specified in the Order and ENTYCE shall not be liable to pay for any Goods and/or Services which are delivered outside of the date/s specified in the Order.

## **5. Property & Risk**

A. Property in the Goods shall pass to ENTYCE from the Supplier upon full payment of the Price or upon delivery, whichever is the earlier.

B. Risk in the Goods shall pass to ENTYCE on delivery of the Goods (although property in the Goods may have passed earlier to ENTYCE).

## **6. Right to Inspect**

A. ENTYCE or its nominated contractors or agents, reserves the right to inspect the Goods either during and/or after manufacture but before dispatch from the Supplier's premises. Any such inspection in no way implies acceptance of such Goods by ENTYCE, or otherwise affects ENTYCE's rights in respect of the Goods.

## **7. Shipping Documents**

ENTYCE shall accept “received for shipment” and “container” bills of lading to the order of ENTYCE or its agents with acceptance by an authorised purchasing officer of ENTYCE to be on the basis as specified in Clause 1 hereof. The term “bills of lading” includes air consignment notes or air waybills or their equivalent for air, land and sea, and all other documents which are customarily accepted as equivalent to delivery of the Goods thereby represented and shall also include delivery orders.

## **8. Import & Export Licences**

A. Where an import or export licence, a foreign exchange control authorisation or similar authorisation is required for the performance of the Contract, the party responsible for obtaining the licence or authorisation shall act with due diligence to obtain it to ensure compliance with the requirements of the Contract.

B. Where ENTYCE is to receive Goods especially manufactured for ENTYCE by the Supplier then the Supplier shall immediately notify ENTYCE of the grant of, or of any absolute or qualified refusal to grant, a requisite import/export licence or authorisation or both.

## **9. Packaging & Marking**

A. Unless otherwise stated in the Order, charges for packing and marking are included. The form and manner of such packing is at the option of ENTYCE. Special requirements of ENTYCE shall be notified to the Supplier in writing with sufficient time to enable completion of the Contract in the mode and at the time stipulated. All the reasonable costs of such special requirements shall be to the Supplier's account unless otherwise mutually agreed to in writing.

## **10. Warranties**

A. The Supplier warrants that the Goods:

- (i) Shall be of merchantable quality and fit for their intended purpose;
- (ii) Shall be manufactured and delivered strictly in accordance with the requirements of the Contract, including but not limited to any drawings, specifications and any other instructions of ENTYCE given for the purposes of the Contract;
- (iii) Shall be free from defects in quality, health, safety, design, materials and workmanship;
- (iv) Do not and will not infringe the intellectual property rights of any third party;
- (v) Shall comply with the requirements of any relevant statutes, regulations or legally applicable standards;
- (vi) Shall be new on delivery to ENTYCE;
- (vii) Where ENTYCE has supplied written specifications and/or requirements the Goods will conform with such specifications and/or requirements; and
- (viii) Where Goods consist of foodstuffs or to be used as raw materials or ingredients in the manufacture or processing of foodstuffs; the Goods will be supplied by the Supplier with a Certificate of Analysis stating compliance to the specification prior to delivery and shall comply with the signed ENTYCE Product Specification where required by Entyce to be fit for human consumption, free from adulteration or foreign materials and shall comply with all the relevant food and hygiene statutes and regulations both in Australia and in any other such relevant country as to composition, processing (if any), packaging and description.

B. The Supplier warrants that the Services:

- (i) Shall be provided with due care and skill;
- (ii) Shall be performed strictly in accordance with the requirements of the Contract, including but not limited to any drawings, specifications and other instructions of ENTYCE given for the purposes of the Contract;

- (iii) Do not and will not infringe the intellectual property rights of any third party; and
- (iv) Shall comply with the requirements of any relevant statutes, regulations or legally applicable standards.

## **11. Liability**

A. The Supplier shall indemnify ENTYCE from and against any liabilities, damages, remedies, losses (including loss of profits), penalties, fines costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by ENTYCE and arising directly or indirectly out of or in connection with:

- (i) any defect and/or non-compliance of the Goods and/or the Services supplied by the Supplier; and/or
- (ii) any delay in supply, manufacture or delivery of the Goods and/or the Services; and/or
- (iii) the non-performance of the Order in any other respect; and/or
- (iv) any claim or suit for alleged infringement of a third parties intellectual property rights relating to the any use or sale of Goods and/or Services; and/or
- (v) any recall or withdrawal of ENTYCE's products caused or contributed to by the Supplier.

The Supplier's liability to indemnify ENTYCE will be reduced in proportion to the extent that such claims, damages or losses are caused by or contributed to by the negligence of ENTYCE.

## **12. Intellectual Property**

A. Where the Contract requires the Supplier to prepare or provide any design, formula, specification or drawings, the Supplier agrees to assign to ENTYCE absolutely:

- (i) the copyright subsisting in any work created by the Supplier or any of its employees, agents or subcontractors in the course of providing the Services; and
- (ii) all rights in respect of any practice, concept, product, process or design the Supplier or any of its employees, agents or contractors creates develops, discovers or first reduces to practice in the course of providing the Services.

B. The Supplier agrees to sign all documents and do all acts and things necessary to ensure that legal ownership of copyright and other intellectual property rights vests in ENTYCE.

C. All reports, correspondence, drawings, plans, computations, specifications, formulations, recipes or similar materials prepared or made by ENTYCE for any purpose in connection with this Contract or any Order shall remain the property of ENTYCE and confidential between ENTYCE and the Supplier and must not be disclosed, copied or used without ENTYCE's prior written consent.

D. Dies, tools, film work, artwork and moulds manufactured or acquired by ENTYCE remain the property of ENTYCE. The Supplier must return them to ENTYCE when requested to do so by ENTYCE. Where dies, tools, moulds, materials and other similar Goods are supplied by ENTYCE to the Supplier this is entirely at the risk of the Supplier.

## **13. Insurance**

A. The Supplier warrants that it has obtained and maintains throughout the duration of the Contract all insurance cover required by law and by the Contract including but not limited to:

- (i) Public and products liability insurance with a limit of liability of not less than \$20,000,000 for any one occurrence; and
- (ii) All insurances required by law including, but not limited to, workers compensation insurance and motor vehicle third party liability insurance.

## **14. Ethical Standards and Corporate Social Responsibility**

The Supplier represents and warrants to Entyce that:

- A. They are committed to the safe and ethical manufacture and supply of Goods and Services, and that they and their subcontractors and suppliers will comply with all applicable labour, health and safety, environmental and corporate social responsibility laws in the country in which the goods are produced;
- B. Their subcontractors and suppliers, will not use any form of serious exploitation of workers, including slavery, trafficking, servitude, forced marriage, forced labour, debt bondage, child labour, or deceptive recruiting for labour services;
- C. They will comply with Entyce' s ethical sourcing policies and/or codes of conduct, as communicated by Entyce from time to time;
- D. They will comply with any ethical sourcing audit requested by Entyce.

## **15. Terms and Conditions for Contractors**

Entyce requires that Suppliers must procure and ensure, that their employees, agents and contractors who will be performing Services for Entyce will:

- A. Obtain Entyce' s prior written approval before subcontracting out any of the Services;
- B. Comply with and ensure that their employees, agents and approved contractors are aware of and comply with all applicable laws, Entyce' s policies and procedures, to the extent that they are applicable, and all lawful directions and orders given by Entyce, or any other person authorised to give directions on their behalf;
- C. Perform the Services in a careful, diligent, proper and efficient manner in accordance with appropriate professional standards, and be liable for the cost of any remedial work if this clause is not complied with;
- D. Be properly qualified for, and skilled in, the performance of the Services and do not prejudice:
  - (i) Safe working practices;
  - (ii) Safety and care of property; and
  - (iii) Continuity of work.
- E. Not interfere with Entyce' s activities or the activities of any other person at the place of performance of the Services; and
- F. On request by Entyce, provide to Entyce, and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by law, including:
  - (i) Producing written reports;
  - (ii) Recommending efficiency opportunities;
  - (iii) Collecting data; and
  - (iv) Monitoring or metering.

## **16. Storage and Transport Service Providers**

In the absence of any pre existing written agreement, all storage and transport service providers contracting with Entyce must adhere to the following requirements:

- A. All equipment used for transportation/processing/storage of raw materials including packaging, work in progress and finished product shall be suitable for the purpose, maintained in good repair and in a clean and hygienic condition;

B. Where temperature-controlled transport is used, documented procedures shall be in place to ensure product temperature requirements are met and recorded for evidentiary and verification purposes. Procedures shall be in place to ensure product safety and quality in the case of vehicle or refrigeration equipment breakdown. All incidents of vehicle or refrigeration equipment breakdown must be recorded and corrective action documented, including the outcome of the product on the load;

C. Refrigeration units used for transporting chilled and frozen foods shall be maintained in good repair and regular calibration of temperature gauges must be undertaken and records maintained and provided upon request;

D. Refrigeration units shall be capable of maintaining product at maximum capacity at the required temperature or suitable validated contingencies shall be in place and documentation maintained and provided upon request;

E. Where temperature control is required as part of the HACCP plan, suitable monitoring activities shall be in place at a suitable frequency with alerts in place to maintain product safety and records maintained and provided upon request for evidentiary verification.

## **17. Mediation of Disputes**

Unless otherwise agreed through previous written agreement between the parties:

### **A. Australian and overseas Suppliers (except mainland China)**

(1) Where a dispute under this contract arises between an Australian or overseas Supplier (except mainland China) and Entyce, the parties shall first comply with the following dispute resolution procedure:

- (a) the complainant will notify the other party of the dispute by giving the other party written notice specifying:
  - (i) the nature of the dispute;
  - (ii) the outcome required by the complainant; and
  - (iii) the action the complainant believes will settle the dispute;
- (b) the parties will attempt to resolve the dispute by mutual negotiation;
- (c) if the parties are unable to reach a resolution of the dispute within 21 days, either of the parties may by notice in writing advise the other party that it seeks to have the dispute resolved by mediation;
- (d) if no agreement can be reached between the parties on an appropriate mediator within 14 days, the aggrieved party must request the President of the Law Institute of Victoria to appoint a mediator with no less than 10 years accreditation experience;
- (e) the mediator will have the right to determine the time, place and procedures including whether to be conducted online virtually or in person as prevailing circumstances permit for the mediation and may or may not allow the appearance of lawyers on behalf of the parties and may co-opt other expert assistance;
- (f) both parties must attend the mediation and make a determined, good faith and genuine effort to resolve the dispute;
- (g) proceedings of the mediator will be as informal as is consistent with the proper conduct of the matter and will allow the mediator to communicate privately with the parties or with their lawyers;
- (h) the parties to the mediation will agree that:
  - (i) everything that occurs before the mediator will be in confidence and in closed session;
  - (ii) all discussions will be without prejudice; and
  - (iii) no documents brought into existence specifically for the purpose of the mediation process will be called into evidence in any subsequent litigation by either of the parties;
- (i) it will be the role of the mediator to act fairly, in good faith and without bias with the purpose of seeking a resolution of the dispute and will treat all matters in confidence;

- (j) each of the parties will have the opportunity to adequately present their case;
- (k) the mediator will have regard to the fairness and reasonableness of any matters pertaining to a dispute by no later than 14 days after referral to the mediator;
- (m) the parties to the mediation will bear the mediation costs on an equal basis and grant immunity from liability to the mediator;
- (n) the parties will report back to the mediator within 14 days, on actions taken, based on the outcome of the mediation;
- (o) where any of the parties believes the mediator is not acting in accordance with this clause, or any of the other parties is not acting in accordance with this clause, the party may withdraw from the mediation; and
- (p) none of the parties will have any cause of action against the mediator or arising out of the conduct of the mediation. The mediator shall have no power to make any decision, determination or recommendation binding on the parties to resolve the dispute.

(2) Nothing contained in the dispute resolution procedures above will deny either of the parties the right to seek injunctive relief from an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned. Further, such dispute resolution procedures will not apply to events giving rise to the immediate termination of this contract under cl. 18 where there is no legitimate dispute as to the interpretation of their meaning or factors giving rise to such events.

## **B. Mainland Chinese Suppliers**

(i) Any dispute arising from or in connection with this contract shall be settled amicably and in good faith through negotiation which if not resolved within 21 days, must be submitted to China International Economic and Trade Arbitration Commission (CIETAC) Hong Kong Arbitration Centre for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

- (ii) The seat of arbitration shall be Hong Kong;
- (iii) The venue for oral hearing shall be Hong Kong;
- (iv) The number of arbitrators shall be one;
- (v) The arbitration proceedings shall be conducted in English.

## **18. Termination**

A. ENTYCE may, without prejudice to any other rights or remedies it has pursuant to this Contract or otherwise, terminate the Contract by notice in writing if:

- (i) The Supplier is in breach of any term or condition of the Contract; or
- (ii) ENTYCE determines that the Supplier has acted in a manner that is harmful to ENTYCE's reputation; or
- (iii) The Supplier is guilty of serious misconduct, fraud, or dishonesty; or
- (iv) The Supplier is insolvent, bankrupt, has an administrator, receiver or controller appointed or an application is made to wind the Supplier up or any similar action is taken.

B. If Goods to be supplied under the Contract are of sub-standard stock from the Supplier, then ENTYCE may terminate the Contract by giving written notice to the Supplier and ENTYCE shall be under no obligation to take any unshipped or undelivered portion of the Goods. Upon termination ENTYCE shall only be liable to pay for any Goods delivered and/or any Services performed prior to termination.

C. If the Contract requires Goods to be manufactured to ENTYCE's specifications or requires the Supplier to install or fit Goods, then at any time prior to completion of the work to be performed, ENTYCE may terminate the Contract by giving written notice to the Supplier and the Supplier shall cease all work from the effective date of termination except as may be otherwise directed by ENTYCE. Upon termination ENTYCE shall only be liable for any Goods



delivered and/or any Services performed prior to termination plus an additional sum agreed between the parties for any raw materials or parts purchased by the Supplier specifically for ENTYCE which the Supplier can demonstrate to ENTYCE's reasonable satisfaction cannot be used by the Supplier for any other customer.

D. Termination under this clause 18 shall be effective from the date stated in a notice given by ENTYCE to the Supplier or if no such date is stated termination shall be effective immediately upon the delivery of the notice to the Supplier.

## **19. General**

A. ENTYCE will not be taken to have waived any right, power or remedy of ENTYCE unless such waiver shall be in writing under the signature of an authorised officer of ENTYCE.

B. All notices and other communications provided for in this Contract shall be airmailed, emailed to admin@entyce.com.au or delivered if to ENTYCE, at its stated address on the Purchase Order and if to the Supplier may (without limiting any other lawful means of giving notice) be sent by such means to its usual business address or registered office or to such other address as shall be designated by the Supplier by a written notice to ENTYCE or to its nominated or actual address as the case requires. All such notices and other communications shall, when mailed be effective five days after posting and in the case of email shall be effective from the day following transmission.

C. ENTYCE may amend or vary the requirements of an Order by written notice to the Supplier.

D. ENTYCE reserves the right to obtain similar Goods and/or Services from any other supplier.

E. The Contract is confidential to ENTYCE and neither its terms nor any particulars of any documents or information relating to it may be disclosed to any third party by the Supplier without ENTYCE's prior written consent. This obligation of confidentiality shall survive the termination of the Contract.

F. The Contract shall in all respects be deemed to be a contract made in Victoria, Australia and the Contract shall be governed by the laws of Victoria, Australia. The non-exclusive jurisdiction of the courts of Victoria, Australia to entertain all claims and actions arising out of this Contract after the application of the dispute resolution mechanisms specified in cl. 17 have been completed.