



## Terms & Conditions

When a Client places an Order for work to be done by ENCO Pharmaceutical Development, Inc. ("EPDI"), the Order constitutes an acceptance by the Client of EPDI's offer to do business under these Terms and Conditions, and an agreement to be bound by these Terms and Conditions. No contrary or additional terms and conditions expressed in a Client's purchase order or other document shall be deemed to become a part of the contract created upon acceptance of these Terms and Conditions, unless specifically accepted by EPDI in writing.

- 1. Orders, Samples, Services** - The Client may place an Order by specifying a Scope of Work in writing. The Order shall not be valid unless it contains sufficient specification to enable EPDI, in its sole discretion, to carry out the Client's requirements. Samples must be accompanied by: a) adequate instruction on type of analysis or service requested, and b) complete written disclosure of the known or suspected presence of any dangerous or hazardous substances, as defined by applicable federal or state law. If any materials not accompanied by adequate disclosure cause interruption in EPDI's ability to process work due to contamination, the Client will be responsible for all costs associated with the contamination, including (but not limited to) clean-up and restoration of equipment and premises, and costs associated with EPDI's business interruption. All turnaround times must be mutually agreed upon and will be calculated from Sample Delivery Acceptance, which is the point in time when EPDI has determined that it can proceed with the defined work following receipt, inspection of samples, and resolution of any discrepancies identified in the submission. Sample delivery alone does not constitute acceptance by EPDI. Prior to Sample Delivery Acceptance at EPDI, the entire risk of loss of or damage to samples remains with the Client. In no event will EPDI have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from EPDI's premises. Client is responsible to ensure that sample shipments comply with all applicable material shipping and labeling laws and regulations. EPDI reserves the right to refuse or revoke Sample Delivery Acceptance for any sample which in EPDI's sole discretion: a) may pose a risk in handling, transport or processing; b) is of unsuitable volume; or c) Client requirements cannot be met. Where, in EPDI's sole discretion, the nature or composition of the samples requires it, EPDI reserves the right to deviate from specified methodologies to the extent necessary or appropriate to meet project objectives following Client notification.
- 2. Disposal / Return of Unused Materials** - Unless otherwise specified by the Client and agreed to in writing by EPDI, sample materials will be held for 30 days following the date of the invoice for the related services. After 30 days, any remaining materials will, in EPDI's sole discretion, be returned to the Client at the Client's expense or disposed of by EPDI in accordance with applicable state and/or federal disposal requirements unless prior arrangements have been made.
- 3. Prices; Price Changes** - Services performed by EPDI will be in accordance with prices quoted or as stated in its most recent Price List. Such prices do not include any sales, use or other taxes unless specifically stated. Prices are subject to change periodically without notice. EPDI may revise its prices provided in this quotation if a) Client revises project requirements, scope, specifications, or EPDI's responsibilities hereunder; b) Client-provided information or requirements are inaccurate or incomplete; c) Costs identified as pass-through expenses (i.e. subcontract services, project-related supplies) increase.
- 4. Payment Terms** - All payment shall be made in currency of the United States of America. Checks drawn on foreign banking institutions are not accepted. Payment in advance is required for all Clients except those whose credit has been established with EPDI. For Clients with approved credit, payment terms are net 30 days from the date of invoicing by EPDI. All late payments are subject to an additional interest and service charge of one and one-half percent (1.5%) per month or portion thereof from the due date until the date of payment. Failure to bill for interest due shall not constitute a waiver of EPDI's right to charge interest. All bank fees are the responsibility of the Client, including wire, transfer or handling fees associated with payment for services. EPDI will not bill a third party without a statement signed by the third party that acknowledges and accepts payment responsibility. Client remains responsible for payment of services billed to a third party. EPDI may suspend work and withhold delivery of data at any time in the event: a) Client fails to make timely payment of any of its invoices; or b) EPDI receives an unfavorable credit report on Client. Client shall be responsible for all costs and expenses of collection, including reasonable attorneys' fees. Client is responsible for work done prior to suspension of work.
- 5. Change Orders, Termination** - Changes to the Scope of Work, price or delivery date may be initiated by EPDI after Sample Delivery Acceptance due to any condition which conflicts with analytical or other protocols warranted in these Terms and Conditions. Changes to the Scope of Work may be initiated by the Client after Sample Delivery Acceptance. Such a change must be documented in writing and may result in a change in cost and turnaround time commitment. EPDI may in its sole discretion refuse to accept such changes, and EPDI's acceptance of such changes is contingent upon technical feasibility and operational capacity. Suspension or termination of all or any part of the work may be initiated by the Client. EPDI will complete all work in progress and Client is responsible for payment in full pursuant to these Terms and Conditions for all work completed.

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6. **Results, Work Product** – Results, methods, and intellectual property generated by services performed under this agreement shall become the property of Client only upon receipt in full by EPDI of payment for the entire Order. In the event that EPDI is required to respond to legal process related to services for Client, Client agrees to reimburse EPDI for hourly charges for personnel involved in the response and attorneys' fees reasonably incurred associated with the litigation and EPDI's response.
7. **Warranties** – EPDI will perform its services in accordance with the written specifications, referenced methods, and project direction as detailed in the associated quotation, and the US FDA's Good Manufacturing Practices, as applicable, and in a manner consistent with the level of care and skill ordinarily exercised by other companies providing like services under similar circumstances. These warranty obligations are the sole and exclusive warranties given by EPDI in connection with any services performed by EPDI or any Results generated from such services, and EPDI gives and makes **NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED**. No representative of EPDI is authorized to give or make any other representation or warranty or modify this warranty in any way. Client's sole and exclusive remedy for the breach of warranty in connection with any services performed by EPDI will be limited to repeating any services performed, contingent on the Client's providing at the request of EPDI and at the Client's expense, additional sample(s) if necessary. Any reanalysis requested by the Client generating Results consistent with the original Results will be at the Client's expense.
8. **Limitation of Liability** - EPDI's liability for damages based on any and all causes of action arising out of or related to this agreement or in connection with provision of services, whether founded in contract or tort, and subject to the further limitation for breach of warranty in Paragraph 7 above, shall be limited to the lesser amount of compensation for the service performed or \$10,000, excluding costs associated with obtaining comparator products and reference materials. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall EPDI be responsible for loss of use, loss of profits, or for any special, indirect, incidental or consequential damages occasioned by the services performed or not performed or by application or use of the reports prepared. Client agrees that these limitations appropriately reflect the business risk and are not unconscionable. In no event shall EPDI have any responsibility or liability to the Client for any failure or delay in performance by EPDI which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of EPDI. Such causes and circumstances shall include, but not be limited to, acts of God, acts of Client, acts or orders of any governmental authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, equipment breakdown, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond EPDI's reasonable control. The limitations in this paragraph apply to any claim or action by Client or any third party based in whole or in part on EPDI's negligence or alleged negligence.
9. **Indemnification** - The Client hereby agrees to indemnify and defend EPDI, its officers, employees and agents from any and all claims by any third party arising out of or related to a) that party's reliance upon the Results provided by EPDI (irrespective of EPDI's negligence or its failure to comply with its warranties or other obligations hereunder); b) the negligence or willful misconduct of Client; c) breach of these terms and conditions or any other agreement between EPDI and Client; d) the disclosure, dissemination or use of any confidential information provided by Client to EPDI. EPDI will indemnify Client from any third party claim arising directly only from the intentional and willful misconduct of EPDI and only to the extent of the Limitation of Liability set forth in Paragraph 8 above.
10. **Governing Law; Jurisdiction and Venue; Waiver of Jury Trial** - These Terms and Conditions and any transactions or agreements to which they apply as well as any dispute between EPDI and the Client, whatever its basis, shall be governed by the laws of the State of Florida, without reference to Florida's conflict of laws jurisprudence. The Client waives any defense of personal jurisdiction or forum non conveniens (inconvenient forum) and agrees to submit to personal jurisdiction in the courts of the State of Florida. The Client agrees that the sole and exclusive venue for any action filed in connection with any dispute arising between Client and EPDI shall be in a court of competent jurisdiction in Orange County, Florida. **CLIENT EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION.**
11. **Miscellaneous Provisions** - These Terms and Conditions, together with any additions or revisions which may be agreed to in writing and signed by EPDI, represent the entire agreement between the parties and provide the only remedies available. These Terms and Conditions shall supersede any previous communication, representations or agreements, either verbal or written, between the Client and EPDI. The invalidity or unenforceability, in whole or in any part, of any provision, term or condition hereof shall not affect the validity or enforceability of the remainder of these terms and conditions or their interpretations. No waiver by EPDI of any provision, term or condition hereof or of any obligation of the Client shall constitute a waiver of any subsequent breach or other obligation.

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