

ISSUE 1 SPC EUROPE LTD & ATR COMPOUNDING LTD TERMS AND CONDITIONS OF PURCHASE

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1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions ("Conditions"), unless the contrary intention appears:

"Contract" means any purchase order submitted to the Vendor (defined below) by SPC Europe Ltd or ATR compounding Ltd UK Ltd. (the "Customer"), together with these Conditions and the terms of any Standards Agreement entered into between the Vendor and the Customer (including any Schedule thereto);

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or an internationally recognised company engaged in the same type of activity under the same or similar circumstances;

"Goods" means any goods, materials or products supplied by the Vendor to the Customer pursuant to a Contract;

"Incoterms 2000" means International Commercial Terms 2000 published by the International Chamber of Commerce;

"Services" means any services supplied by the Vendor to the Customer pursuant to a Contract;

"Vendor" means the contracting Party supplying the Goods or Services, as named in the purchase order forming part of the Contract;

References to the singular include the plural and vice versa; any reference to any Party includes its successors in title and permitted assignees; headings are included in these Conditions for ease of reference only and shall not affect the interpretation or construction of these Conditions; any obligation in these Conditions not to do any act or thing shall be deemed to include an obligation not to permit the doing of that act or thing; any reference to any statute, regulation or other similar instrument shall be construed as a reference to the statute, regulation or other similar instrument as amended by any subsequent statute, regulation or similar instrument or as contained in any subsequent re-enactment thereof.

1.2 Despatch by the Vendor of all or some of the Goods or provision by the Vendor of all or part of the Services specified in the Contract will be deemed to be conclusive evidence of the Vendor's acceptance of these Conditions. No variation or addition to these Conditions or any Contract is effective unless made in writing, signed by or on behalf of the Parties and expressed to be such a variation, and no Contract made may be withdrawn, cancelled, deferred, terminated or varied except as set out in the Contract without the Customer's written agreement.

1.3 The Contract overrides and takes the place of any other terms or conditions emanating from or referred to by the Vendor, including but not limited to any terms and conditions contained in or endorsed on any delivery note, Vendor quotation, acceptance of order, invoice or similar document including but not limited to documents detailing the specification of the Goods or Services.

1.4 All purchase orders placed by the Customer, whether by means of electronic data transmission or otherwise, will be subject to these Conditions.

2 PRICE

2.1 The price for the Goods or Services agreed by the Customer and recorded in the Contract is a fixed price and unless otherwise specified in the purchase order, includes manufacture, supply, delivery and off-loading, packaging, labelling, carriage, insurance, royalties, licences, licence fees, taxes, duties and all other impositions (other than UK value added tax).

2.2 No variation in the price or extra charges shall be accepted by the Customer.

3 PAYMENT

3.1 Unless agreed otherwise in writing, the Customer shall pay for the Goods or Services, in each case without prejudice to any early payment discount or other benefit that may be agreed, within 60 days net monthly of receipt of a correct, undisputed and properly due invoice.

3.2 Invoices must state: the relevant purchase order number; the period to which the invoice relates; the Vendor's bank account for payment; and all charges and applicable taxes.

3.3 If the Customer has a bona fide dispute in relation to all or some of any invoice submitted by the Vendor, the Customer may withhold payment of the amount subject to the dispute.

4 GOODS - DELIVERY, INSPECTION AND PACKAGING

4.1 Title to any goods shall pass to Customer only upon payment in full. All risk of loss or damage to the Goods shall pass to the Customer on signing of delivery note and delivery shall occur upon the Vendor delivering the same to the delivery address(es) set out in the purchase order, save where the purchase order states that delivery is to be on a different basis, including any basis set out in Incoterms 2000. The Goods shall remain at the Vendor's risk until they have been safely delivered to the Customer to the address specified in the Contract and then accepted by the Customer in accordance with the terms of the Contract. If the Customer rejects any Goods in accordance with the Contract title and risk will remain with or thereupon revert to the Vendor.

4.2 The date for delivery shall be specified in the purchase order.

4.3 The Vendor shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Contract number, date of Contract, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

4.4 Time for delivery shall be of the essence.

4.5 Unless otherwise stipulated by the Customer in the Contract, deliveries shall only be accepted by the Customer in normal business hours, and no more than 5 days early.

4.6 Where the Customer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Vendor to deliver any one instalment shall entitle the Customer at its option to treat the whole Contract as repudiated.

4.7 The Customer may reject, on giving notice to the Vendor, any Goods delivered in excess of the quantity stipulated in the Contract.

4.8 The Customer may at any time before or after delivery inspect the Goods but such inspection shall not relieve the Vendor of any of its obligations under the Contract.

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- 4.9 All Goods must be adequately protected for transport and the Customer shall in no circumstances be responsible to the Vendor for any additional charges for packing. All packaging materials will be removed and disposed of by the Vendor as soon as possible after delivery.
- 4.10 All of the Goods shall be inspected and/ or tested during the manufacture and prior to dispatch from the Vendor's premises. The Customer shall also be entitled to inspect the Goods at any time during the manufacture and be able to specify certain standards of materials, workmanship and inspection levels.
- 4.11 The Vendor shall provide and maintain quality control and inspection systems acceptable to the Customer.
- 4.12 The Vendor shall accept a quality systems appraisal by the Customer's Quality Assurance department should the Customer wish to undertake such appraisal.
- 4.13 Where a Vendor is issued with the Customer's "Vendor quality assurance manual" or other requirements ("the Requirements"), the Vendor shall be fully responsible for ensuring that all of the Goods and/or Services conform to the Requirements and conditions of the Manual.
- 4.14 The Vendor will be responsible for supplying any specifications for Goods and/or Services.

5 TITLE, QUALITY AND REJECTION

- 5.1 The Vendor warrants and undertakes to the Customer that:
- 5.1.1 it has all requisite power and authority to enter into and to carry out all of its obligations under a Contract;
- 5.1.2 it has obtained and/or shall make available to the Customer all consents, clearances, permissions, licences and authorisations necessary for the purchase of the Goods by, or provision of the Services to, the Customer and use of the Goods and/or provision of Services contemplated by a Contract will not infringe the intellectual property rights of any third party;
- 5.1.3 it has the right to sell the Goods and the Customer will enjoy quiet possession of the Goods;
- 5.1.4 it will provide the Services with promptness, diligence and in a professional manner, in accordance with Good Industry Practice;
- 5.1.5 the Goods shall be of the best available design, of the best quality, material and workmanship, shall be without fault, and shall conform to any specification.
- 5.1.6 the Goods shall comply in all respects with the relevant standard specification or specification in the Contract and shall be free from any defects in design, material and workmanship for a period of twelve months from the date of acceptance;
- 5.1.7 the Customer's rights under these Conditions are in addition to the statutory conditions implied in favour of the Customer including those conditions implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982; and
- 5.1.8 the Goods and/or Services shall comply with all applicable statutory and regulatory requirements.
- 5.2 The Vendor shall ensure that the Goods and/or Services correspond to any representations, descriptions, advertisements, samples, brochures, drawings (including CAD), samples, specifications made or given by the Vendor or stipulated by the Customer and are fit for any purpose that the Customer has made known to the Vendor.
- 5.3 The Goods shall be properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 5.4 The Vendor shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling and delivery of the Goods.
- 5.5 If any of the Goods and/or the provision of the Services fail to comply with the provisions set out in Condition 5 the Customer shall be entitled to avail itself of any one or more of the remedies listed in Condition 11.
- 5.6 The Customer may provide feedback on Vendor performance against agreed performance indicators and the Vendor must maintain an acceptable agreed level of performance against these indicators and where the Vendor does not so perform the Vendor shall be obliged to take all reasonable corrective action.

6 DAMAGE OR LOSS IN TRANSIT

The Vendor undertakes at its own expense to repair or replace Goods lost or damaged in transit as soon as reasonably practicable and delivery will not be deemed to have taken place until the defective part of the Goods have been remedied and/or made good to the satisfaction of the Customer.

7 TERMINATION

- 7.1 The Customer may terminate the Contract if:
- 7.1.1 the Vendor is in material or persistent breach of the Contract and, if the breach is remediable, has failed to remedy it within ten days after service of a written notice requiring it to be remedied; or
- 7.1.2 the Vendor or any of its assets is subject to any form of winding up, administration, receivership, insolvency proceedings, arrangements with creditors generally, enforcement of security or legal process or repossessions.
- 7.2 The Customer may terminate the Contract for convenience upon 10 days written notice to the Vendor, provided that the Customer shall pay the Vendor for all Goods and / or Services delivered and accepted in accordance with the Contract up to the date on which the termination notice is received.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 To the extent that there are any intellectual property rights in any of the instructions, drawings, tooling, specifications and data ("Customer Materials") supplied by the Customer to the Vendor, the Vendor acknowledges that the Customer Materials and the intellectual property rights in such Customer Materials shall at all times be and remain the exclusive property of the Customer and shall be held by the Vendor in safe custody until returned to the Customer and shall not be disposed of other than in accordance with the Customer's written instructions, nor shall the Customer Materials be used otherwise than as authorised by the Customer in writing.
- 8.2 To the extent that there are any intellectual property rights in any reports, drawings, technologies, records and reports and all other similar such items created as part of the Services ("Customer Deliverables"), the Vendor acknowledges that the intellectual property rights in such Customer Deliverables shall be, from creation, the exclusive property of the Customer and shall be held by the Vendor in safe custody until provision to the Customer and shall not be used otherwise than as authorised by the Customer in writing. To the extent that any such right, title and interest does not vest in the Customer by operation of law, the Vendor irrevocably assigns to the Customer as at the date of creation all of its rights, title and interest in and to any such Customer Deliverables without further consideration and such assignment will also be an assignment of future copyright pursuant to section 91 of the Copyright, Designs and Patents Act 1988. The Vendor shall, and shall procure that any of its employees or

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contractors shall, give the Customer all reasonable assistance and execute all documents necessary for Customer to receive the fullest benefit of the intellectual property rights in any Customer Deliverables.

8.3 On termination of the Contract the Vendor shall return to the Customer all the Customer Materials and deliver up all Customer Deliverables.

8.4 Where the Contract price includes the cost of making or purchasing tooling and/or inspection equipment, these articles become the property of the Customer and on completion of the Contract or earlier termination shall be held by Vendor in safe custody properly identified and maintained, until disposal instructions are issued by the Customer. Such articles shall only be used by Vendor in connection with Contracts from the Customer. Vendor shall provide copies of drawings of such articles to the Customer upon request and at no extra charge.

8.5 All equipment provided by the Customer to the Vendor shall be maintained by the Vendor in good condition and the Vendor shall at the Vendor's cost adequately insure and keep insured all equipment in the joint names of the Customer and Vendor against all risks until disposed of in accordance with the Customer's written instructions.

8.6 The Vendor shall promptly notify the Customer if any equipment is destroyed, lost or damaged and in need of replacement and in any such event the Vendor shall at its expense promptly replace or reinstate the same (unless the Customer elects to do so in which event the Vendor shall pay the cost thereof and afford to the Customer all access and other facilities reasonably required by the Customer in connection therewith).

9 CONFIDENTIALITY AND DATA PROTECTION

9.1 The Vendor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Vendor by the Customer or its agents and any other confidential information concerning the Customer's business or its products which the Vendor may obtain ("Confidential Information") and the Vendor shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Vendor's obligations to the Customer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Vendor.

9.2 The Vendor shall keep all Confidential Information and other data secure.

9.3 The Vendor undertakes to comply with the provisions of the Data Protection Act 1998.

10 INDEMNITY

The Vendor agrees to indemnify, defend and hold harmless the Customer from and against any and all losses, expenses, liabilities, claims, damages and costs the Customer may incur or suffer arising out of or in relation to any breach or negligent performance or non-performance of this Contract.

11 REMEDIES

Without prejudice to any other right or remedy which the Customer may have, if any Goods are not supplied and/or the Services are not provided in accordance with, or the Vendor fails to comply with, any of the terms of the Contract the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services have been accepted by the Customer:

- (a) to terminate the Contract in whole or in part;
- (b) to reject the Goods (in whole or in part) and return them to the Vendor at the risk and cost of the Vendor on the basis that a full refund for the Goods so returned shall be paid forthwith by the Vendor;
- (c) at the Customer's option to give the Vendor the opportunity at the Vendor's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods but without any liability to the Vendor; and
- (e) to claim such damages as may have been sustained in consequence of the Vendor's breach or breaches of the Contract.

12 INSURANCE

Without prejudice to the liabilities of the Vendor under the Contract, the Vendor shall maintain with a reputable insurer sufficient insurance cover to meet its liabilities under the Contract. The Vendor shall produce evidence of such insurances at any time upon request by the Customer.

13 PUBLICITY

The Vendor will not make any statement or issue any circular letter dealing with the subject matter of the Contract, nor shall it in its correspondence make any use of any paper with printed headings or other printed notes referring to the subject matter of the Contract, nor shall the Vendor make use of the Customer name or logo without first obtaining the Customer's written approval.

14 ASSIGNMENT AND SUB-CONTRACTING

The Vendor may not assign, transfer or otherwise dispose of any of its rights or sub-contract, transfer or otherwise dispose of any of its obligations under the Contract without the prior written consent of the Customer. The Customer may assign the Contract or any part of it to any person, firm or company.

15 FORCE MAJEURE

15.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under these Conditions so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a proven Force Majeure Event.

15.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event:

- (a) notify the other party of the nature and extent of such Force Majeure Event; and
- (b) use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as feasible.

15.3 For the purposes of this Condition 15, a Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil

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commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism.

15.4 In the event that either party is unable to fulfil its obligations under this contract due to a Force Majeure event the other party may terminate the contract upon the Force Majeure subsisting for 12 weeks.

16 NO PARTNERSHIP

Nothing in these Conditions or in any Contract is intended to create a partnership or the relationship of principal and agent or employer and employee between the Parties. Neither Party has the authority or power to bind, to contract in the name of or to create a liability for the other in any way or for any purpose.

17 RIGHTS OF THIRD PARTIES

A person who is not a party to these Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

18 SEVERABILITY

If any provision of this Contract or any part of any provision is determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it will be void or unenforceable to that extent only and the validity and enforceability of any of the other provisions or the remainder of any such provision will not be affected.

19 MISCELLANEOUS

19.1 Neither Party's rights shall be prejudiced or restricted by any concession, indulgence or forbearance extended to the other Party. No waiver by either Party of any breach by the other shall operate as a waiver of any other subsequent breach.

19.2 Each Party's rights under these Conditions are in addition to any other rights which that Party may have under the general law or otherwise.

19.3 If the Vendor comprises two or more persons, their obligations are joint and several.

20 GOVERNING LAW

This Contract is governed by, and construed in accordance with the laws of England and Wales and any dispute arising out of this engagement shall be subject to the exclusive jurisdiction of the courts of England to which both parties hereby agree to submit for these purposes.

21 CONDITIONS WHERE CERTIFICATION REQUIRED

21.1 Unless specifically stated to the contrary, this Condition 23 applies to Contracts where Certification is required. To the extent of any inconsistency between this Condition 23 and any other Condition, Condition 23 shall prevail.

21.2 Where Certification is required, all deliveries are to be accompanied by a Certificate of Conformity signed by a senior and properly qualified member of Vendor's Quality Control organisation stating his position therein and specifying among other things that the Goods have been inspected and tested to conform in all respects with the Contract requirements, Relevant Drawing(s), Specification and Order number and any qualification in respect of Design Approval must be stated on the Certificate of Conformity

21.3 In the case where a Vendor is a stockist, each delivery is to be accompanied by:

- (a) a Certificate of Conformity or copy thereof issued by the manufacturer certifying that the Goods comply with the relevant drawings and Specifications, and
- (b) a written declaration from the Vendor stating the Goods are as originally supplied by the manufacturer and that the Certificate of Conformity referred to at (a) above applies to the Goods under delivery