



PURCHASE ORDER TERMS AND CONDITIONS

The COMPANY wishes to procure; and the CONTRACTOR is able to supply certain GOODS all as described in the PURCHASE ORDER. Such GOODS shall be supplied in accordance with LOGIC Purchase Order Terms and Conditions (Short Form) – Edition 2, December 2005 (copies of which are deemed to be in the possession of both the COMPANY and the CONTRACTOR), in conjunction with the following special conditions. The terms shall be read as one document. In the event of ambiguity or contradiction between the Purchase Order Terms and Conditions and the Special Conditions the Special Conditions shall take precedence over the Purchase Order Terms and Conditions.

New

A4 Insert the following new Clause A4:

None of the terms and conditions of the PURCHASE ORDER shall be considered to be waived by either the COMPANY or the CONTRACTOR unless a waiver is given in writing by one PARTY to the other. No failure on the part of either party to enforce any of the terms and conditions shall constitute a waiver of such terms. Unless specifically provided otherwise, rights arising under the PURCHASE ORDER are cumulative and do not exclude rights provided by law.

New

A5 Insert the following new Clause A5:

All notices in respect of the PURCHASE ORDER shall be given in writing and delivered by hand, by telefax, by email or by first class post to the PARTY concerned at its registered office or its principal place of work to the following addresses:

The COMPANY address is:

ATR Holdings Limited
Unit 16
Denmore Road
Bridge of Don
AB23 8JW

Marked for the attention of: Group Supply Chain and Inventory Co-ordinator

The CONTRACTOR notice details shall be the same as provided in the PURCHASE ORDER.

Such notices shall be effective:

- (a) If delivered by hand, at the time of delivery;
- (b) If sent by telefax or email, one business day after transmission;
- (c) If sent by first class post, forty eight (48) hours after the time of posting.

SECTION B THE CONTRACTOR'S COMMITMENT TO THE COMPANY

B2

Delete the following wording in paragraph 2, fifth sentence:

“right to terminate the PURCHASE ORDER and recover from the CONTRACTOR the direct losses sustained as a result of the delay up to an amount not to exceed the value of the PURCHASE ORDER” and replace with “right to invoke any one or more of the remedies outlined in Clause B13.”

New

B2.1 Insert the following new Clause B2.1:

The CONTRACTOR shall attach a delivery note to the GOODS which shall show the date of the PURCHASE ORDER , the PURCHASE ORDER number, the type and quantity of GOODS provided, special storage instructions and if the GOODS are to be delivered by instalments, the outstanding balance of GOODS remaining to be delivered.

New

B2.2 Insert the following new Clause B2.2:

GOODS must be delivered during the COMPANY'S normal business hours or at such other time as agreed and instructed by the COMPANY.

New

B2.3 Insert the following new Clause B2.3:

If the CONTRACTOR requires the COMPANY to return any packaging material to the CONTRACTOR such requirement shall be clearly stated on the delivery note. Any such packaging material shall be returned to the CONTRACTOR at the CONTRACTOR'S sole cost.

New

B2.4 Insert the following new Clause B2.4:

If the CONTRACTOR delivers less than 95% of the type and quantity of GOODS ordered, the COMPANY may reject the GOODS. If the CONTRACTOR delivers more than 105% of the quantity of GOODS ordered, the COMPANY may, at its discretion, reject the GOODS or the excess GOODS and any rejected GOODS shall be returnable at the CONTRACTOR'S sole risk and expense. If the CONTRACTOR delivers more or less than the quantity of GOODS ordered and the COMPANY accepts the delivery, a pro rate adjustment shall be made to the invoice for the GOODS.

New

B2.5 Insert the following new Clause B2.5:

The CONTRACTOR shall not deliver the GOODS in instalments without the COMPANY'S prior written consent. Where it is agreed that the GOODS are to be delivered by instalments, they may be invoiced and paid for separately. However failure by the CONTRACTOR to deliver any

one instalment by the agreed time or at all or any defect in an instalment shall entitle the COMPANY to the remedies set out in Clause B13.

New

B3.1 Insert the following new Clause B3.1:

No additional charges whatsoever shall be charged by the CONTRACTOR unless agreed in writing and signed by the COMPANY.

New

B3.2 Insert the following new Clause B3.2:

The COMPANY shall on receipt of a valid VAT invoice from the CONTRACTOR in accordance with clause C5, pay to the CONTRACTOR, such additional amounts in respect of VAT as are correctly chargeable on the supply of the GOODS.

B4 Insert the following new paragraph at the start of the Clause:

The CONTRACTOR shall keep the COMPANY fully informed of its progress with regard to supplying the GOODS by the DELIVERY DATE and shall, subject to any other requirement of the PURCHASE ORDER, submit to the COMPANY for review and comment all relevant documents in connection with the GOODS including, but not limited to, calculations, sketches, drawings, reports and recommendations. All such documents shall be submitted in sufficient time to allow the COMPANY the time specified in the PURCHASE ORDER (or if no such time is specified, a reasonable time) to review and comment on them without affecting the DELIVERY DATE.

Delete the following wording in paragraph 1, sentence 2:

“on reasonable prior notice” and replace with “at any time before delivery.”

New

B4.1 Insert the following new Clause B4.1:

If following such inspection or testing the COMPANY, acting reasonably, considers that the GOODS do not conform or are unlikely to comply with Clause B5, the COMPANY shall inform the CONTRACTOR and the CONTRACTOR shall immediately take such remedial action as is necessary to ensure that the GOODS comply with the COMPANY’S requirements.

New

B4.2 Insert the following new Clause B4.2:

Notwithstanding any such inspection or testing carried out by the COMPANY, the CONTRACTOR shall remain fully responsible for the GOODS and any such inspection or testing shall not reduce or otherwise affect the CONTRACTOR’S obligations under the PURCHASE ORDER.

New

B4.3 Insert the following new Clause B4.3:

The COMPANY shall have the right to conduct further inspections and tests after the CONTRACTOR has carried out its remedial actions.

B5 In line 3 after:

“PURCHASE ORDER” insert the wording “or where no such requirement with regard to quality, fitness for purpose or specification is provided within the PURCHASE ORDER then the GOODS shall be of sound materials and workmanship, free from defects in material and workmanship and be fit for their ordinary purpose”

New

B5.1 Insert the following new Clause B5.1:

The CONTRACTOR shall ensure that the GOODS comply with all applicable and statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the GOODS.

B6 In line 5, delete:

“24 months from delivery” and insert “24 months from receipt and acceptance of the GOODS in accordance with clause C.2. Should the CONTRACTOR fail to replace or repair the GOODS within a reasonable period, the COMPANY shall be entitled to effect the repair or replacement of the GOODS itself by means of others at the cost of the CONTRACTOR. Repairs and replacements shall be subject to a 24 month warranty period from the date of delivery of such repairs and replacements.”

New

B7.1 Insert the following new Clause B7.1:

The CONTRACTOR shall ensure that the PURCHASE ORDER number is included on all delivery notes and on delivered packages.

New

B13 Insert the following new Clause B13:

If the GOODS are not delivered on the DELIVERY DATE or are not ready for uplifting by COMPANY on the agreed date, or do not comply with the specifications or undertakings set out in Clause B5, then without limiting any of its other rights or remedies, the COMPANY shall have the right to any one or more of the following remedies, whether or not it has accepted the GOODS;

- a) To terminate the PURCHASE ORDER;
- b) To reject the GOODS (in whole or in part) and return them to the CONTRACTOR at the SUPPLIERS own risk and expense;
- c) To require the CONTRACTOR to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods (if paid);
- d) To refuse to accept any subsequent delivery of the GOODS which the CONTRACTOR attempts to make;
- e) To recover from the CONTRACTOR any costs incurred by the COMPANY in obtaining substitute GOODS from a third party;
- f) To claim damages for any other costs, loss or expenses incurred by the COMPANY which are in any way attributable to the CONTRACTOR'S failure to carry out its obligations under the PURCHASE ORDER.

The COMPANY considers time to be of the essence. Unless otherwise specified in the PURCHASE ORDER, in the event that the GOODS are not delivered on the DELIVERY DATE or are ready for uplifting by the agreed date, the COMPANY may, as its option, claim or deduct 1% of the price of the GOODS for each day of delay in delivery by way of liquidated damages, up to a maximum of 10% of the total price of the GOODS. If the COMPANY exercises these rights in this Clause it shall not be entitled to any of the remedies stated in sub clauses a) to f) above in respect of the late delivery of the GOODS (however such remedies will be available in respect of the GOODS' condition). Where liquidated damages are payable these should be deemed to be a genuine pre-estimate of the COMPANY'S losses as a result of such delay and shall not be construed as penalties.

These rights and remedies are in addition to its rights and remedies available to COMPANY under Statute and Common Law

New

B14

Insert the following new Clause B14:

During the period of the PURCHASE ORDER and for a further period of two (2) years from termination or expiry of the PURCHASE ORDER the CONTRACTOR shall maintain full and accurate records, of all charges, prices, costs and expenses associated with and invoiced in respect of the GOODS and all data processed under the PURCHASE ORDER.

The CONTRACTOR shall, on reasonable written notice in advance, allow the COMPANY and any auditors of, or other advisers to, the COMPANY to access any of the CONTRACTOR's premises, personnel, relevant records and systems used by the CONTRACTOR in the production of the GOODS as may be reasonably required to verify that the GOODS are being provided in accordance with this PURCHASE ORDER and that the invoices are accurately prepared.

The COMPANY shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the CONTRACTOR

Subject to the CONTRACTOR'S obligations of confidentiality, the CONTRACTOR shall provide the COMPANY (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

SECTION C THE COMPANY'S COMMITMENT TO THE CONTRACTOR

C2 Insert the following new paragraph at the start of the Clause:

A PURCHASE ORDER is deemed to be accepted by the CONTRACTOR when the CONTRACTOR issues a written acceptance of the PURCHASE ORDER or the CONTRACTOR undertakes any act consistent with fulfilling the order at which point the PURCHASE ORDER .

At the beginning of paragraph 2 insert:

For the avoidance of doubt a signature on a delivery note shall not indicate acceptance of the GOODS by the COMPANY. Following delivery the COMPANY shall be afforded reasonable time to inspect the GOODS in order to confirm acceptance thereof in accordance with the specifications provided in the PURCHASE ORDER.

C4 In line 2 delete:

"the DELIVERY DATE" and replace with "the date of receipt and acceptance of the GOODS by the COMPANY in accordance with clause C2."

C5 In paragraph 1, sentence 2:

Delete the wording "thirty (30) days of receipt" and replace with "seventy five (75) days of receipt" and insert "All invoices for the GOODS must be submitted to the COMPANY within sixty (60) days of delivering the GOODS, if the CONTRACTOR fails to submit invoices within the aforementioned period, the CONTRACTOR'S rights to receive further payment from the COMPANY and the COMPANY'S obligations to also make further payments to the CONTRACTOR shall be extinguished."

In paragraph 4, line 3:

Delete "(3%" and replace with (1%).

New

C5.2 Insert the following new Clause C5.2

The COMPANY may at any time, without limiting any of its other rights or remedies, set off any liability of the CONTRACTOR to the COMPANY against any liability of the COMPANY to

the CONTRACTOR, whether either liability is present or future, liquidated or unliquidated and whether or not either liability arises under the PURCHASE ORDER.

New

C5.3 Insert the following new Clause C5.3:

The CONTRACTOR must attach proof of delivery (POD) with all invoices for GOODS.

C6 Insert the following new paragraph after paragraph 1:

The CONTRACTOR acknowledges that all materials, equipment and tools, drawings, specifications and data supplied by the COMPANY to the CONTRACTOR and all rights in same are, and shall remain, the exclusive property of the COMPANY. The CONTRACTOR shall keep the COMPANY materials in safe custody at its own risk, maintain them in good condition until returned to the COMPANY, and not dispose or use the same other than in accordance with the COMPANY'S written instruction or authorisation.

C7 Insert In paragraph one, line 2 after "PURCHASE ORDER":

the words "in whole or in part"

Insert the following new paragraph after the end of the Clause:

For the avoidance of doubt, such compensation shall not include loss of anticipated profits or any consequential loss.

SECTION D OUR COMMITMENTS TO EACH OTHER

New

D1.5 Insert the following new Clause D1.5:

Notwithstanding anything else to the contrary it is agreed that the indemnities contained in the PURCHASE ORDER shall be primary, full and without prejudice to any right of contribution from an insurer or any third party.

D3 Delete this Clause in its entirety and replace with the following:

"For the duration of the PURCHASE ORDER the CONTRACTOR shall maintain in force, with a reputable insurance company, insurance defined in Clause D3.1 to cover the liabilities that may arise under or in connection with the PURCHASE ORDER and shall on the COMPANY'S request provide copies of the insurance certificate(s) giving details of the cover provided and the receipt for the current year's premium in respect of each insurance."

New

D3.1 Insert the following new clause D3.1:

The CONTRACTOR must have the following Insurance:

- (a) Employers Liability: £5,000,000 (Five Million Pounds) per occurrence
- (b) General Third Party Liability: £5,000,000 (Five Million Pounds) per occurrence
- (c) Third Party and Passenger Liability: £2,000,000 (Two Million Pounds) per occurrence
- (d) Product Liability: £5,000,000 (Five Million Pounds)
- (e) Professional Indemnity: £2,000,000 [Two Million Pounds]
- (f) Other None

D4 Insert new paragraph at the end of the Clause:

The CONTRACTOR shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the CONTRACTORS obligations under the PURCHASE ORDER, and shall ensure that such employees, agents, subcontractors comply with the obligations set out in this Clause as if they were a party to the PURCHASE ORDER. The CONTRACTOR may also disclose such of the COMPANY'S information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

New

D4.1 Insert the following new Clause D4.1:

This Clause D4 shall survive termination of the PURCHASE ORDER.

D5 Insert new sentence at the end of the Clause:

Variations to the PURCHASE ORDER shall be agreed in writing between the COMPANY and the CONTRACTOR. The COMPANY shall not accept the CONTRACTOR'S invoices for GOODS where substitutions, changes or alterations have been made to the GOODS or where the lump sum prices, unit rates or mark-up percentages or other pricing methodologies have not been agreed in writing between the PARTIES.

New

D6.1 Insert the following new Clause D6.1:

The CONTRACTOR shall use all reasonable endeavours to mitigate the effect of a Force Majeure event on the performance of its obligations.

New

D6.2 Insert the following new Clause D6.2:

If a Force Majeure event prevents, hinders or delays the CONTRACTOR'S performance of its obligations for a continuous period of more than ninety (90) business days, the COMPANY may terminate the PURCHASE ORDER immediately by giving written notice to the CONTRACTOR.

D7 Delete this Clause in its entirety and replace with the following:

"The CONTRACTOR may not assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the PURCHASE ORDER without the COMPANY'S prior written consent, such consent not to be unreasonably withheld or delayed. The COMPANY may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the PURCHASE ORDER and may subcontract or delegate in any manner any or all of its obligations under the PURCHASE ORDER to any third party or agent."

D8 In line 2 delete the word "parties" and replace with "representatives."

D9 In paragraph one, line 1 delete:

"The CONTRACTOR or the COMPANY" and replace with "the COMPANY"

In line 3 delete:

"the other party" and replace with "the CONTRACTOR"

In line 4 delete:

"the other party" and replace with "the CONTRACTOR"

Insert a new bullet point after (B):

(C) The CONTRACTOR suspends, or threatens to suspend or ceases or threatens to cease to carry on all or a substantial part of its business.

Insert a new bullet point after (C):

(D) The CONTRACTORS financial position deteriorates to such an extent that in the COMPANYS reasonable opinion the CONTRACTORS capability to adequately fulfil its obligations under the PURCHASE ORDER has been placed in jeopardy; or

Insert a new bullet point after (D):

(E) The COMPANY (being an individual) dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

