

SYMPHONY ENVIRONMENTAL LIMITED
CONDITIONS OF PURCHASE

1. DEFINITIONS AND INTERPRETATION

1.1. In these Conditions (save where the context is inconsistent therewith) the following words and expressions shall have the following meanings: -

"Buyer" shall mean Symphony Environmental Ltd. whose registered office is at 6 Elstree Gate, Borehamwood, England WD6 1JD

"Conditions" shall mean the standard terms and conditions of purchase and supply set out in this document, including any special terms and conditions agreed in writing between the Buyer and the Seller in relation to the Contract

"Confidential Information" means information (including information residing in materials) supplied by the Buyer to the Seller, which is not at the time of supply available to the public.

"Contract" shall mean the contract between the Buyer and the Seller for the purchase supply and delivery of Goods which shall be upon these Conditions

"Delivery Address" shall mean the delivery address stated in the Order

"Finished Products" are products which are ready for supply to the end-user

"Goods" shall mean the goods and/or the work which are specified in the Order including any additions thereto and any part or parts thereof, which goods and/or work may be manufactured using Materials, Confidential Information and/ or Intellectual Property Rights

"Materials" shall mean the materials, if any, supplied by the Buyer to the Seller for the purpose of manufacturing the Goods, and identified in the Order.

"NDA" shall mean the confidentiality and non-use agreement, if any, entered into between the Buyer and the Seller in respect of Materials, Confidential Information, and Intellectual Property Rights.

"Order" shall mean the description, specification and quantity, of the Goods including all other information relating to the Contract that the Buyer provides to the Seller.

"Price" shall mean the price specified in the Order, or if not specified a reasonable price.

"Seller" shall mean the firm company or person to whom the Order is addressed

"Specification" shall mean the specification of the Goods set out in the Order or if not specifically set out in the Order the most recent specification for the same goods notified to the Seller prior to placement of the Order.

references to persons include bodies corporate and unincorporate associations and partnerships and vice versa and words importing the singular include the plural and vice versa and words importing a gender include every gender

1.2. references to a statutory provision shall include reference to: -

1.2.1. any statutory modification consolidation or re-enactment of that statutory provision for the time being in force.

1.2.2. all statutory instruments or orders made pursuant to that statutory provision.

1.3. headings are for ease of reference only and shall not affect the construction of any provision hereof

1.4. obligations assumed by more than one party shall be joint and several

1.5. The currency of the contract shall be as specified in the Order, and if not specified shall be United States dollars.

2. MATERIALS, CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

2.1. To the extent that the supply of Goods by the Seller to the Buyer pursuant to these Conditions relies on or is subject to the use of Materials, Confidential Information or Intellectual Property Rights disclosed or supplied by the Buyer to the Seller, the Seller and the Buyer agree that the intellectual property in such materials and information shall remain with the Buyer.

2.2. Any Materials shall be provided free of charge, unless otherwise specified in the Order, but the Seller shall be responsible for

obtaining at his expense all other materials, equipment and labour to fulfil the Order.

2.3. The Seller shall hold the Materials as bailee for the Buyer and store them separately (marked as the property of the Buyer) in a suitable indoor storage environment (under conditions notified from time to time by the Buyer) at the Seller's sole risk, until used in the manufacture of the Goods.

2.4. In the event that the Materials are destroyed or rendered unsuitable for use in manufacture of the Goods, or the Seller is required in accordance with these Conditions to repair or replace the Goods, the Buyer shall supply replacement Materials to the Seller as soon as reasonably practicable at the cost of the Seller.

2.5. Without prejudice to the terms of any NDA, the Seller shall not use, or allow access to, the Materials, the Confidential Information, or the Buyer's intellectual property rights other than for the manufacture and supply of Goods to the Buyer under the Contract

2.6. All artwork names and marks supplied by the Buyer for use in relation to the Goods or their labelling or packaging and all intellectual property rights in respect of the foregoing (including trademarks of the Buyer) shall belong exclusively to the Buyer and shall be used by the Seller only in relation to Goods supplied to the Buyer and in the manner and form specified by the Buyer from time to time, and not otherwise

2.7. The Seller shall within 14 days of a written request by the Buyer provide the Buyer with such details as the Buyer may require from time to time of Materials or Goods held by the Seller.

2.8. Without prejudice to the terms of any NDA, the Seller shall deliver up to the Buyer or at the Buyer's option destroy, all Materials, and all documents or materials embodying or recording any part or parts of the Confidential Information or the Buyer's intellectual property rights within 7 days of written demand by the Buyer.

2.9. For the purpose of enforcing the provisions of Condition 2.8 the Buyer may take possession of the Materials and for that purpose may enter premises where the Materials may be located, and this Condition shall be construed as an irrevocable licence granted to the Buyer by the Seller to enter the Seller's premises and the premises of its associated companies, and subsidiary and parent undertakings, to remove the Materials

3. BASIS OF PURCHASE

3.1. Any Order from the Buyer shall be deemed accepted by the Seller when the Seller indicates acceptance in writing or by e-mail, fax, or telephone, or when the Seller delivers the Goods or informs the Buyer that they are ready for despatch or collection.

3.2. All orders placed and all acceptances given for the Goods (including without prejudice to the generality of the foregoing the Order) are subject to the Conditions, which shall apply notwithstanding any condition to the contrary in the Seller's conditions or established from any course of dealing or conduct (which, insofar as they are inconsistent with the Conditions, are deemed to be waived)

3.3. The Seller acknowledges that there are no representations outside the Conditions which have induced him to enter into the Contract and the Conditions (including for the avoidance of doubt the terms of any NDA, shall constitute the entire understanding between the parties for the supply of Goods by the Seller and purchase by the Buyer

3.4. No modification of the Conditions shall be effective unless made by an express written agreement between the parties. The signing by the Buyer of any of the Seller's documentation shall not imply any waiver or modification of the Conditions.

4. WARRANTIES

4.1. The Seller warrants to the Buyer that the Goods will: -

4.1.1. conform as to quantity, quality and description and in all other respects with the details specified in the Order. Unless stated to the contrary on the Order the quality shall be good and merchantable quality, and average tolerances for each item in the case of Finished Products shall be a five per cent variation in thickness and one half per cent variation in size.

4.1.2. be fit for the purpose set out in the Order

4.1.3. be free of defects in materials and workmanship

4.1.4. comply in all respects with the Specification and otherwise comply with the provisions of any statutory requirement for the time

being in force relating to the Goods and their manufacture, method of operation and safety as well as complying with any relevant Standard specification; and

4.1.5. comply with the conditions and warranties implied by the UK Sale of Goods Act 1979 (as amended) except where inconsistent with other terms contained herein, when the latter shall apply.

5. PACKAGING

The Goods or any part thereof shall be properly and adequately packed against risk of damage to the Goods in transit and the packaging of the Goods (including any pallets and boxes used) shall bear the purchase number of the Buyer as stated on the Order relating to such Goods. The Buyer shall not be under any liability in respect of the return of the packaging of the Goods (including without limitation any boxes or pallets in or on which the Goods are delivered) to the Seller, and the Seller shall have no right to charge the Buyer additionally for the value of such packaging.

6. PRICE OF GOODS AND TERMS OF PAYMENT

6.1. The Price of the Goods shall be stated in the Purchase Order and unless otherwise so stated shall be: -

6.1.1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and

6.1.2. inclusive of all charges for packaging, packing, shipping, printing, block or plate making; and

6.1.3. inclusive of carriage, insurance and delivery of the Goods to the Delivery Address

6.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing, and in the event that an increase in the Price is not agreed the Seller shall be obliged to deliver the goods at the Price.

6.3. The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

6.4. The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods, and each invoice shall quote the Buyer's purchase number stated on the Order.

6.5. Unless otherwise stated in the Order, the Buyer shall pay the Price within 90 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, 90 days after acceptance of the Goods by the Buyer.

6.6. The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

7. DELIVERY, TITLE, AND RISK

7.1. Delivery of the Goods by the Seller shall take effect when the Goods arrive at the Delivery Address, or at such other address as the Seller is, before despatch, instructed in writing by the Buyer to deliver the Goods. Any reasonable extra cost of delivery to such other address shall be borne by the Buyer.

7.2. Without prejudice to Condition 7.1 above, where the Buyer collects the Goods from the premises of the Seller, delivery shall take effect at the moment when the loading of the Goods on to the vehicle of the Buyer's carrier is complete.

7.3. Unless otherwise instructed to the contrary in writing by the Buyer, the Seller shall deliver the Goods by the date specified in the Order, and time shall be of the essence of the Contract.

7.4. The title in the Goods shall pass to the Buyer upon delivery, or upon the Buyer's payment for the Goods, whichever shall occur first

7.5. The Goods shall remain at the risk of the Seller until such time as delivery is effected notwithstanding that delivery may have been postponed pursuant to Condition 7.6 or that title to the Goods may have already passed to the Buyer.

7.6. If for any reason the Buyer is unable to accept delivery of the Goods at the time agreed, the Seller shall store and safeguard the said Goods and take all reasonable steps to prevent damage or deterioration until delivery. Any reasonable extra cost incurred by the Seller shall be borne by the Buyer.

7.7. The Buyer may reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to

inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

7.8. The Seller shall maintain insurance of the Materials and the Goods whilst they are under the Seller's control or at his risk.

8. INSPECTION AND TESTING

8.1. For the purposes of assuring to the Buyer the quality of the Goods supplied under the Contract, the Seller shall permit the duly authorised representative of the Buyer at any time on reasonable notice to inspect any premises of the Seller where any of the Goods, Materials or any labelling or packaging for them are manufactured or stored and/or to test any of the Goods.

8.2. Without prejudice to the obligations of and warranties provided by the Seller and the rights and remedies of the Buyer set out in the Conditions, if as a result of any inspection or testing of the Goods pursuant to Condition 8.1, the Buyer is not satisfied that the Goods comply in all respects with the Order or are unlikely on completion of manufacture so to comply, the Buyer shall inform the Seller accordingly and the Seller shall take all such steps as may be necessary to ensure compliance.

9. CANCELLATION

9.1. The Buyer shall without prejudice to any other right to cancel the Order, be entitled to cancel the Order or cancel it in part at any time if:-

9.1.1. the Goods supplied do not strictly comply with the Order or

9.1.2. the material used in, or the workmanship, of the Goods does not reach the standard specified or does not pass such reasonable inspection as may be required by the Buyer its customers or its agent or by any government department or statutory body concerned with the type of product comprised in the Goods or the materials or workmanship used in the production of the Goods.

9.1.3. the Goods or any part thereof have not been completed to the satisfaction of the Buyer in accordance with a timetable specified in the Order or otherwise agreed for the delivery of the Goods.

9.1.4. the Goods supplied do not comply with the conditions and warranties implied by the UK Sale of Goods Act 1979 (as amended) except where inconsistent with other terms contained herein, when the latter shall apply.

9.1.5. the Goods do not comply with the provisions of any applicable statutory requirement for the time being in force relating to the Goods and their manufacture, method of operation and safety or fail to comply with any relevant Standard specification.

9.2. The Seller may not cancel this Contract for any reason without the consent of the Buyer which if given shall be deemed to be on the express condition that the Seller shall fully and effectively indemnify the Buyer against any and all loss, damage, claims and actions arising out of such cancellation (which shall include without limitation additional costs incurred by the Buyer as a result of purchasing equivalent or replacement goods from a third party).

9.3. Any right to cancel the Order or terminate the Contract shall not prejudice any other right or remedy of the Buyer in respect of the breach concerned or any other breach.

9.4. On cancellation or termination of the Order the Seller shall without prejudice to the terms of any NDA cease to manufacture or sell the Goods and shall cease to use directly or indirectly the Confidential Information, intellectual property rights or Materials and return forthwith all Materials and all documents or materials embodying or recording any part or parts of the Confidential Information or the Buyer's intellectual property rights. For the avoidance of doubt, the terms of any NDA shall continue to apply.

10. SPECIFICATION

10.1 The Buyer will specify manufacturing instructions, chemicals to be used, colour, clarity, purity, size, thickness, quantity hazchem, packaging and labelling, storage and handling conditions, shelf life, and any other relevant requirements.

10.1 The Buyer reserves the right to change the Specification of any Goods before they have been manufactured, but any reasonable extra cost will be borne by the Buyer. The Order as amended will still be subject to the Conditions.

11. SUB-CONTRACTING

- 11.1 The Seller shall not sub-contract manufacture of the Goods without the previous written consent of the Buyer
- 11.2 The Seller shall ensure that any sub-contractor is aware of and agrees to be bound by the Conditions (including for the avoidance of doubt and without limitation the terms of any NDA)
- 11.3 The Seller shall fully and effectively indemnify the Buyer in respect of all damage or loss occurring to any person or property (including that of the Buyer) and against all actions suits claims demands charges or costs arising as a result of a breach by the Seller of clause 11.1 or 11.2 above and/or a breach by the subcontractor of these Conditions.

12. WARRANTY FOR REPAIR OR REPLACEMENT

- 12.1. The Seller will, if required by the Buyer in accordance with Condition 13.5, and without prejudice to any other remedies available to the Buyer, make good by the supply of replacement Goods any defects which upon delivery and/or under proper use appear in the Goods or a part or parts of the Goods
- 12.2. The Seller will use all reasonable endeavours to procure for the Buyer the benefit of such warranties and other rights as are conferred on the Seller by the terms of the Seller's agreement with any supplier of part or parts of the Goods.

13. LIABILITY AND INDEMNITY

- 13.1. Subject to Condition 13.2 below, the Buyer's total liability to the Seller in contract, tort or breach of statutory duty, misrepresentation, or otherwise arising in relation to the use of the Materials, Confidential Information, and intellectual property rights in connection with the performance of or contemplated performance of the Contract shall be limited to the Price of the Order in relation to which the liability arises
- 13.2. In no circumstances shall the Buyer be liable to the Seller for: -
- 13.2.1. any loss, damage, costs, expenses, or other liability that the Seller may suffer or incur as a result of any claim, proceeding or action (actual or threatened) that use of the Materials, Confidential Information or intellectual property infringes the intellectual property rights of any third party
- 13.2.2. any indirect or special or consequential loss or damage suffered or incurred by the Seller (including without limitation, loss of profits, loss of business, loss of contracts, damage to goodwill, loss of opportunity or otherwise) in connection with the performance or contemplated performance of the Contract
- 13.3. Nothing in these Conditions excludes liability of the Buyer to the Seller for fraudulent misrepresentation or for death or personal injury arising from any negligence of the Buyer
- 13.4. Without limiting any other remedy of the Buyer and specifically without prejudice to Condition 13.5 below, if any Goods are not supplied in accordance with the Contract, then the Buyer shall be entitled to: -
- 13.4.1. require the Seller to repair the Goods or supply replacement Goods in accordance with the Contract
- 13.4.2. at the Buyer's option to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price paid, and the payment by the Seller of the cost of Materials, if any, used in the manufacture of such Goods
- 13.5. The Seller shall fully and effectively indemnify the Buyer in respect of all damage injury or loss occurring to any person or property (including that of the Buyer) and against all actions suits claims demands charges costs or expenses in connection therewith: -
- 13.5.1. arising out of breach of warranty given by the Seller in connection with the Goods or otherwise arising from the condition or use or performance of the Goods; and
- 13.5.2. arising from any act or omission of the Seller or its employees, agents or sub-contractors in supplying or delivering the Goods or otherwise performing the Contract
- 13.6. The Seller shall maintain insurance in a sum adequate to meet all reasonable claims that may result from the Order and these Conditions.

14. CONFIDENTIALITY

- 14.1 All information acquired by the Seller in consequence of the Order or negotiations for the Order shall be strictly confidential and

shall not be used for any purpose other than fulfilment of the Order. It shall not, without prejudice to the generality of the foregoing, be used for the purpose of circumventing or competing with the Buyer or enabling or assisting anyone to do so.

- 14.2 The fact of the Contract and its terms shall be treated as confidential by both parties and shall not be disclosed to a third party PROVIDED THAT if the Seller or its agents or sub-contractors wishes to use the Contract for advertisement display or publication the Buyer's written consent to such use must first be obtained.

15. RIGHT TO TERMINATE

Notwithstanding its rights pursuant to these Conditions and any rights conferred by law the Buyer shall be entitled to terminate this Contract without liability to the Seller summarily by notice in writing if the Seller (i) commits any breach of its provisions or (ii) goes into liquidation or has a receiver administrative receiver or administrator appointed or makes or offers any arrangement or composition with creditors generally or ceases to carry on its business or substantially the whole thereof or threatens to cease to carry on the same, or if any petition or receiving order in bankruptcy shall be presented or made against the Seller.

16. SELLER'S ADDITIONAL OBLIGATIONS

- 16.1. The Seller shall: -
- 16.1.1. provide to the Buyer on request all such details as the Buyer may require as to how the Seller intends to fulfil the Order, including without limitation, details of equipment and staff, production dates, stocks of materials, shipment dates and any other relevant information
- 16.1.2. send to the Buyer on the day of despatch of each consignment the relevant despatch note or Bill of Lading together with the invoice for such consignment
- 16.1.3. send to the Buyer a monthly statement of account; and
- 16.1.4. mark the Buyer's Order number clearly on the consignment package packing notes advice notes invoices and all other correspondence relating to the Order.
- 16.2. In the event of the Seller failing to comply with 16.1 above the Buyer shall have the right until the breach is remedied to delay payment for the Goods without forfeiting any discount for prompt payment.

17. GENERAL

- 17.1. All communications between the Parties shall be in the English language, and any document in another language shall be professionally translated at the cost of the Party proffering it.
- 17.2. The Buyer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract through any holding or subsidiary undertaking or associated company.
- 17.3. Goods are purchased on condition that they are not supplied from any country, or by any person or entity, sanctioned by the United Kingdom, the United States of America, or the European Union.
- 17.4. The Contract is personal to the Seller and the Seller shall not assign the Contract or any part of it or otherwise deal in, subcontract or otherwise delegate any of its obligations under the Contract or any part of it without the prior written consent of the Buyer.
- 17.5. Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.6. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby
- 17.7. Any dispute or difference arising out of or in connection with this Agreement shall be referred to the arbitration of a sole arbitrator to be appointed in accordance with Section 16(3) of the UK Arbitration Act 1996 ("the Act") - the seat of such arbitration being London England
- 17.8. In the event of failure of the parties to make the appointment pursuant to Section 16(3) of the Act the appointment shall be made by the President for the time being of the Chartered Institute of Arbitrators

17.9. The arbitration will be regarded as commenced for the purposes set out in Section 14(1) of the Act when one party sends to the other notice in accordance with Clause 21 of this Agreement.

17.10. The Arbitrator shall decide the dispute in accordance with the laws of England.

18. THIRD PARTY RIGHTS

Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation of this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such rights unless expressly so stated by the Parties. This does not affect any right or remedy of a third party which may exist or be available apart from that Act.

19. PROPER LAW

The Contract shall in all respects be governed by and interpreted in accordance with the laws of England and the Buyer and the Seller submit in relation to enforcement, to the exclusive jurisdiction of the courts of England.

20. FORCE MAJEURE

20.1 If in consequence of war, invasion, insurrection, martial law, or natural disaster, the performance of the Contract becomes impossible, or the cost to the Seller increases by more than 20%, or the value of the Goods to the Buyer decreases by more than 20%, either Party may give Notice thereof to the other Party. If such conditions subsist for more than 30 days after such Notice, either Party may give seven days' notice to cancel the Order.

20.2 If by reason of any change in the value of the currency of the contract in relation to GBP the Price to the Buyer in GBP increases by more than 10% the Buyer may give 21 days' notice at any time to cancel the Order.

21. NOTICES

21.1 All Notices must be in writing and sent by facsimile transmission or by e-mail confirmed by a letter delivered by hand or sent by pre-paid first-class post or by courier:

- (a) (in case of communications to the Buyer) to its registered office
- (b) (in the case of communications to the Seller) to its registered office or the address specified in the Order, or such other address as shall have been notified in writing to the Buyer by the Seller.

21.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first-class post, 5 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- (b) if delivered by hand, or by courier on the day of delivery.
- (c) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- (d) Communications addressed to the Buyer shall be marked for the attention of the Chief Executive.