



Nitto Avecia Pharma Services, Inc
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Nitto Avecia Pharma Services, Inc. Terms & Conditions for Goods & Services

1. Order of Precedence, Acceptance, Modification.

1.1 **Order of Precedence.** These terms and conditions together with the specifications, drawings, or other documents referred to, attached or incorporated by reference (collectively "Agreement"), supersede any prior or contemporaneous communications, representations, promises, or negotiations respecting the subject matter of this Agreement, unless otherwise agreed in writing signed by both parties. If there is an irreconcilable conflict among the provisions of those documents, the following order of precedence applies: a) any document executed by both parties after the issuance of this Agreement that is expressly intended to amend or supersede the terms herein; then b) this Agreement; then c) the General Terms and Conditions in each purchase order which Supplier agrees in writing; and finally d) other contract documents agreed to in writing by the parties.

1.2 **Acceptance.** Each purchase order is for the purchase of goods, services, or both described on the face of each purchase order (collectively, "Goods") and is issued by Avecia and/ or its subsidiary(s) identified on the face of each purchase order. Each purchase order is deemed accepted upon the earlier of the return of the acknowledgment copy of each purchase order or the commencement of performance by Supplier. Avecia rejects any additional or inconsistent terms and conditions offered by Supplier at any time. Any reference to Supplier's quotation, bid or proposal does not imply acceptance of any term, condition, or instruction contained in such document. No course of prior dealing or usage of the trade may modify, supplement or explain any terms used in this agreement.

1.3 **Modification.** No change to or modification of this Agreement will be binding upon the parties hereof unless in writing, specifically identifying that it amends this Agreement, and signed, or approved electronically, by an authorized procurement representative or officers of the both parties. If any of the parties hereof becomes aware of any ambiguities or conflicts between this Agreement and any other document, the party will immediately submit the matter to the other party for resolution.

2. Delivery, Shipment and Packaging

2.1. Supplier will deliver Goods in the quantities and on date(s) specified on each purchase order or scope of work. If delivery dates are not stated, Supplier will offer its best delivery date(s), which will be subject to acceptance by Avecia. Unless otherwise agreed, all Goods shipped in one day from and to a single location must be consolidated on one bill of lading or air waybill.

2.2. **Time is of essence for Avecia.** If the delivery schedule is endangered for any reason other than Avecia's fault, Supplier will, at its expense, deliver Goods by the most expeditious delivery method. Avecia reserves the right to reject, at no expense to Avecia, all or any part of any delivery that is not delivered in the same condition delivery held at the time Supplier took possession. All items will be packaged according to Avecia's instructions or, if none, according to good commercial practice in a manner sufficient to ensure receipt in an undamaged condition. Avecia will not be liable for any discharge, spill or other environmental incident (including clean-up costs) involving any Goods until received by Avecia. If Goods include products, all containers will be properly marked for identification as instructed by Avecia's purchase order and contain a packing slip that details, at a minimum: (i) Avecia purchase order number(s), (ii) line item number(s), (iii) product part number, (iv) detailed product description, (v) total number of boxes in shipment, (vi) quantity of product shipped, and (vii) final delivery address. Items delivered in advance of Avecia's delivery schedule may be returned or stored at Supplier's expense. The purchase order number(s) and line item number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading and air waybills.

2.3. Within one business day after Supplier delivers the Goods to the address instructed by Avecia, Supplier will send Avecia a complete set of delivery or shipping documents including the commercial invoice and packing list.

3. **Notice of Delay.** Supplier must immediately notify Avecia in writing of any delays or anticipated delays and provide all relevant information with respect to such delay.

4. **Excusable Delay (Force Majeure).** Neither party will be in default for any delay or failure to perform due to causes beyond its reasonable control and without its fault or negligence ("Force Majeure Event"). Any delay or failure to

perform caused by the default of a sub-tier supplier of Supplier will be excused only if (a) it is beyond the control of both Supplier and its sub-tier supplier(s) and without the fault or negligence of any of them, and (b) the Goods to be furnished cannot be obtained from other sources in sufficient time to permit Supplier to meet the delivery schedule. Supplier's ability to provide Goods at a more advantageous price or Supplier's economic hardship in processing necessary operations for delivery of the Goods will not constitute a Force Majeure Event. The party affected by a Force Majeure Event will promptly provide written notice to the other, explaining in detail the full particulars and expected duration of the Force Majeure Event, and will use its best efforts to remedy the delay. If Supplier's delivery is delayed, Avecia may, at Avecia's sole option, cancel deliveries scheduled during the period of the Force Majeure Event or elect to extend the period of performance to cover the period caused by the Force Majeure Event. If a Force Majeure Event occurs that affects delivery of Goods to Avecia, Supplier will allocate its available resources in a manner that assures Avecia of at least the same amount of total time in completing the delivery as was allocated to Avecia before to the Force Majeure Event. If delivery of any Goods is delayed for more than 30 days, Avecia may, without liability, cancel all or any part of such purchase order.

5. Shipping Terms, Title and Risk of Loss

5.1. All deliveries will be made in accordance with Incoterms® 2010. If the Goods will be transported by Supplier to Avecia's location in the U.S., unless otherwise specified on the face of the Purchase Order, delivery of the Goods will be made D.D.U. Avecia's location and risk of loss for the Goods passes to Avecia upon delivery of the Goods at Avecia's warehouse.

5.2. The foregoing does not relieve Supplier of any responsibility for hidden damages discovered after acceptance of the Goods. Notwithstanding the foregoing, title and risk of loss to Goods subject to a consignment stock agreement pass upon release of the Goods from the consignment stock as per Avecia's request. Avecia may direct Supplier to ship the Goods to Avecia or to any third party designated by Avecia.

6. Avecia-Supplied Materials

6.1. Title to any material, tooling, equipment, services or technical data that Avecia pays for or is provided to Supplier by or on behalf of Avecia, including replacements ("Avecia Property"), will remain or vest with Avecia. Supplier will conspicuously label Avecia Property as such, maintain it in good condition, keep written records of the Avecia Property in its possession and the location of the property, not allow any liens to be placed upon it, and not change its location without prior written approval from Avecia. Supplier is responsible for inspecting and determining that the Avecia Property is in useable and acceptable condition.

6.2. Supplier will use Avecia Property exclusively to fulfill the Avecia Purchase Orders unless otherwise authorized in writing by Avecia's procurement representative. Avecia Property is intended for use at the Supplier's site only or as otherwise authorized in writing by Avecia's procurement representative and, to the extent applicable, is subject to U.S. and other government export or re-export requirements. Supplier is responsible for any loss, damage, or destruction of Avecia Property and any loss, damage or destruction of any third party property resulting from Supplier's negligent use of Avecia Property. Supplier will not include the cost of any insurance for Avecia Property in the prices charged under this Agreement. Supplier will return Avecia Property or dispose of it at Avecia's sole option as it directs in writing. Avecia makes no representations and disclaims all warranties (express or implied) with respect to Avecia Property.

7. Price. Supplier will furnish the Goods at the prices stated on the face of the Purchase Order. If prices are not stated on the face of the Purchase Order, Supplier will offer its lowest prices subject to written acceptance by Avecia. Unless otherwise provided on the face of each purchase order, the prices include all packaging and freight to the specified delivery point; applicable taxes and other government charges including, but not limited to, all sales, use or excise taxes; and all customs duties, fees or charges. To the extent that value added tax (or any equivalent tax) is properly chargeable on the supply to Avecia of any Goods, Avecia will pay the tax in addition to payments otherwise due to Supplier under each purchase order, if Supplier provides to Avecia a value-added tax (or equivalent tax) invoice.

8. Price: Most Favored Customer and Meet or Release. Supplier warrants that the prices charged for the Goods delivered under a purchase order are the lowest prices charged by Supplier to any third party customers for similar Goods in similar quantities. If Supplier charges any third party customer a lower price for a similar volume or scope of similar services, Supplier must notify Avecia and apply that price to all Goods ordered under such purchase order. If at

any time before full performance of each purchase order Avecia notifies Supplier in writing that Avecia has received a written offer from another supplier for Goods similar to those to be provided under such purchase order at a price lower than the price set forth in this Purchase Order, Supplier will immediately meet the lower price for any undelivered Goods. If Supplier fails to meet the lower price Avecia, at its option, may terminate the balance of such purchase order without liability.

9. Invoicing and Payment. After each shipment made or service provided, Supplier will submit an invoice describing the Goods provided and, as applicable, part numbers, quantity, unit of measure, hours, and the unit and total prices. Any incidental charges such as royalties, selling commissions, non-recurring engineering, or other incidental charges must be separately itemized and identified on the invoice. The invoice will be accompanied (if applicable) by a signed bill of lading or express receipt evidencing shipment. Payment of an invoice does not constitute acceptance of the Goods and is subject to appropriate adjustment should Supplier fail to meet the requirements of the Purchase Order. Unless agreed otherwise in a writing signed by authorized representatives of both parties, payment terms are net 45 days.

10. Set Off and Liens. Avecia may deduct any amount owing from Supplier to Avecia against any amount owing to Supplier under this Agreement. Supplier hereby waives its right to file a lien against any property or assets of Avecia or otherwise encumber such in a summary or other proceeding. Supplier will indemnify and hold Avecia harmless for any liens or claims filed by Supplier's sub-tier contractors or agents against Avecia or its assets relating to amounts owed by Supplier to its sub-tier contractor or agents.

11. Inspection

11.1. All Goods may be inspected and tested by Avecia, its customers, higher-tier contractors, and end users at all reasonable times and places. If an inspection or testing is made on Supplier's premises, Supplier will provide, without additional charge, all reasonable facilities and assistance required for the inspection and tests. In its standard inspection and testing of the Goods, Supplier will use an inspection system accepted by Avecia in writing. Supplier will maintain all inspection records, including sub-tier supplier records relating to the Goods and make available to Avecia during the performance of this Purchase Order.

11.2. Final inspection and acceptance by Avecia will be at destination unless otherwise specified in each purchase order. Avecia may inspect 100% or a sample of Goods, at Avecia's option, and may reject all or any portion of the Goods or lot of Goods if the Goods are defective or nonconforming. If Avecia performs any additional inspections after discovering defective or non-conforming Goods, the additional inspection costs will be paid by Supplier. No inspection, tests, approval, design approval, or acceptance of the Goods relieves Supplier from liability for warranty, latent defects, fraud, or negligence.

12. Warranty

12.1. Supplier warrants to Avecia, its successors, assigns, customers and end users that, upon delivery, and during the entire Warranty Period specified below, all Goods furnished (including all replacement or corrected Goods or components that Supplier furnishes under this warranty) will (a) be free from defects in material, workmanship, and design, even if the design has been approved by Avecia, (b) conform to applicable drawings, designs, quality control plans, specifications and samples and other descriptions furnished or specified by Avecia, (c) be merchantable, (d) be fit for the intended purposes set forth herein (to the extent the Goods are not of a detailed design furnished by Avecia) and operate as set forth herein, (e) comply with all applicable national and local laws, (f) be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances, (g) not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize misappropriated third party trade secret information, (h) if containing or using chemical substances, the chemical substance is on the Inventory of Chemical Substance compiled and published by the Environmental Protection Agency under the Toxic Substances Control Act, and (i) all Material Safety Data Sheets required to be provided by Supplier will be provided to Avecia before the respective shipment of Goods and will be complete and accurate. Services will meet the highest standards in the industry.

12.2. The Warranty Period will be for a period of 1 year from the date of delivery to the end user or the date on which any longer or broader government requirement covering the Goods ends. These warranties will survive any delivery,

inspection, acceptance or payment by Avecia for the entire Warranty Period. Goods that meet the preceding standards are collectively called “conforming Goods.” If conforming Goods are not furnished or are delivered late, then Avecia may, at its election and in addition to any other rights or remedies it may have at law or in equity, have the Goods repaired, replaced, corrected or sourced from a third party, at Supplier’s expense. Supplier is also responsible for all related expenses and damages including without limitation, the costs of removal, disassembly, failure analysis, fault isolation, reinstallation, re-inspection and retrofit of the nonconforming Goods or of Avecia’s affected end-product; all freight charges; all customer charges; and all corrective action costs (i.e., costs of additional inspection or quality control systems). Unless set off by Avecia, Supplier will reimburse Avecia for all such costs upon receipt of Avecia’s invoice. If Supplier is unable to remedy the nonconformance or to deliver replacements or such measures are delayed for an unreasonable period of time, then Avecia may, at its election, rescind the Purchase Order, demand a reduction of the purchase price and/or claim damages from Supplier.

13. Changes. Avecia may direct any changes to each purchase order or scope of work, through its authorized procurement representatives, by written or electronic notification. If the change causes an increase or decrease in the cost of performing such purchase order, an equitable adjustment will be made in such purchase order price, delivery dates or both, and such purchase order will be modified in writing or electronically. Any claim for adjustment under this provision may, at Avecia’s option, be deemed to be waived unless asserted in writing (including the amount of the claim) and delivered to Avecia within 15 days from the date of the receipt by Supplier of the Avecia-directed change to such purchase order. If the cost of property made obsolete or excess as a result of a change is paid by Avecia, Avecia may prescribe the manner of disposition of the property.

14. Design and Process Changes. Supplier will make no changes to the design, materials, manufacturing location, equipment or processes specified in each purchase order or documents referenced in it, or if none, those in place when each purchase order is issued, without the advance written approval of Avecia’s procurement representative.

15. Stop Work. At any time by written notice and at no cost, Avecia may require Supplier to stop all or any part of the work under each purchase order up to 30 days (“Stop Work Order”). Immediately upon receipt of a Stop Work Order, Supplier will comply with its terms. At any time during the stop work period, Avecia may, in whole or in part, either cancel the Stop Work Order or terminate the work under the Termination section of this Agreement. To the extent the Stop Work Order is canceled or expires, Supplier must resume work.

16. Termination

16.1. The non-breaching party may terminate this Agreement if the other party commits a material breach and fails to remedy the breach within 30 calendar days following receipt of written notice specifying the grounds for the breach. A material breach includes, but is not limited to, late delivery or delivery of nonconforming Goods. The solvent party may terminate this Agreement upon written notice if the other party becomes insolvent or if any petition is filed or proceedings commenced by or against that party relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

16.2. Notwithstanding any firm time period or quantity on the face of each purchase order, Avecia may terminate each purchase order in whole or in part at any time with or without cause for unperformed services upon 30 days’ prior written notice.

16.3. If Avecia terminates a purchase order under either 16.1 or 16.2, Avecia’s sole liability to Supplier, and Supplier’s sole and exclusive remedy, is payment for Goods received and accepted by Avecia before the termination. The payment can be set off against any damages to Avecia. Upon termination, Avecia may require Supplier to deliver to Avecia Goods and Avecia will pay the purchase order price for those Goods subject to set off against any damages to Avecia.

16.4. To the extent that any portion of each purchase order is not terminated under 16.1 or 16.2, Supplier will continue performing that portion.

17. Cessation of Delivery. If delivery of any Goods called for under each purchase order is to be discontinued or suspended at any time within one year after final delivery of any Goods under each purchase order, Supplier must give Avecia at least 180 days prior written notice of the discontinuance or suspension. During the notice period Supplier must accept orders from Avecia for the Goods at the price and on the terms of the last purchase order of particular Goods. If

the Supplier discontinues manufacture of the Goods and does not provide Avecia another qualified source, the Supplier shall provide Avecia all drawings, specifications, data, and know-how which to enable Avecia to manufacture or procure said Goods under a royalty-free license which is hereby granted.

18. General Indemnification. Supplier will, at its expense, defend and indemnify Avecia and its parent companies, subsidiaries, affiliates and agents, and their respective officers, directors, shareholders, and employees, and Avecia's customers (collectively "Indemnitees") from and against any and all loss, cost, expense, damage, claim, demand or liability, including reasonable attorney and professional fees and costs and the cost of settlement, compromise, judgment or verdict incurred by or demanded of an Indemnitee arising out of, resulting from or occurring in connection with Supplier's negligence, willful misconduct, or breach of the terms of this Agreement. In no event will Supplier enter into any settlement without Avecia's prior written consent, which will not be unreasonably withheld.

19. Insurance. Supplier will have at all times a liability insurance which includes, but is not limited to, (i) commercial general liability (including product liability and, for services to be performed, completed operations liability) in a sum no less than \$1 million, (ii) automobile liability in a sum no less than \$1 million, (iii) worker's compensation in an amount no less than the applicable statutory minimum requirement, (iv) employer's liability in an amount of no less than \$1 million, and (v) property insurance covering Avecia's Property pursuant to Section 6.2. All policies will be with insurance carriers with an AM Best rating of no less than A- or equivalent. Prior to the delivery of any Goods or commencement of any services under this Agreement, Supplier will provide to Avecia evidence that Supplier maintains the foregoing insurance. Such insurance will be primary and non-contributory, and will be specifically endorsed or otherwise name Avecia and/or its subsidiary(s) as additional insured. Supplier shall provide Avecia a certificate of insurance that is acceptable to Avecia in Avecia's sole opinion. Except where prohibited by law, Supplier will require its insurers to waive all rights of recovery or subrogation against Avecia, its subsidiaries and affiliated companies, and its and their respective officers, directors, shareholders, employees and agents. The amount of insurance carried in compliance with the above requirements will not be construed as either a limitation on or satisfaction of Supplier's indemnification or other obligations under this Agreement.

20. Confidentiality and Ownership of Intellectual Property

20.1. All Goods, including without limitation inventions, discoveries, specifications, samples, drawings, materials, know-how, designs, processes, and other information whether technical, business, financial or other, that: (a) has been or will be provided to Supplier by or on behalf of Avecia or which Supplier otherwise acquires under this Agreement; (b) Supplier will design, develop or otherwise create only for embodying in Avecia's products in connection with a purchase order whether or not completed and (c) the existence, negotiations, terms and performance of this Agreement shall be regarded by Supplier as confidential and deemed to be "Confidential Information" of Avecia. Supplier shall promptly and fully disclose to Avecia all Confidential Information under 20.1(b) above in sufficient detail to enable Avecia to practice and protect same and will assist Avecia in every proper way (at Avecia's expense) to obtain for Avecia's own benefit patents, copyrights and/or other rights of protection on any such Confidential Information in any and all countries. All Confidential Information under 20.1(b) shall be a "work for hire" and the ownership and copyright therein vests in Avecia and shall be the exclusive property of Avecia. To the extent that exclusive title or ownership rights in such Confidential Information may not originally vest in Avecia, Supplier hereby irrevocably assigns, transfers and conveys to Avecia all right, title and interest therein. This Section 20 does not affect Supplier's intellectual property rights, rights to apply intellectual property rights or confidential information which were made before each purchase order and independent of Avecia's Confidential Information.

20.2. Avecia's Confidential Information will remain the property of Avecia and will not be used by Supplier for any purpose other than for performing this Agreement, may not be disclosed to any third party, and will be returned to Avecia upon the earlier of Avecia's written request or completion of this Agreement. If, with Avecia's prior written approval, Supplier furnishes Confidential Information to a sub-tier supplier, Supplier will bind the sub-tier supplier in writing to the obligations set forth in this Section 20 and Supplier will remain responsible to Avecia for any breach of this provision by its sub-tier suppliers.

21. Audit

21.1. Supplier will maintain suitably detailed records as may be necessary to adequately reflect Supplier's compliance with the terms of this Purchase Order for at least five years from the last date of delivery. Supplier will permit Avecia's auditors to have access at all reasonable times to Supplier's books and other pertinent records. Supplier will also furnish other information as may be needed by Avecia's representatives in auditing compliance.

21.2. If, as a result of an audit, any invoice submitted by Supplier is found to be in error, an appropriate adjustment will be made to the invoice or the next succeeding invoice following the discovery of the error and will be paid promptly by Supplier or Avecia, as the case may be. Supplier will promptly correct any other Supplier deficiencies discovered as a result of the audit.

22. Assignment and Subcontracting. Supplier will not assign this Agreement or any rights or obligations or subcontract all or any material aspect of the work called for without the prior written approval of Avecia. Any assignment without Avecia's written approval will be voidable at the option of Avecia. Avecia may assign this Agreement, in whole or part, to its subsidiaries or affiliates, or to any purchaser or successor to all or substantially all of the assets of the business or product line to which this Agreement relates without Supplier's consent and upon written notice to Supplier.

23. Relationship of Parties/Independent Contractor.

23.1. Nothing in this Agreement will be construed to place Supplier and Avecia in an agency, employment, franchise, joint venture or partnership relationship. Neither party has the authority to obligate or bind the other in any manner, and nothing contained in this Agreement creates rights of any kind for any third parties and neither party will make any representation to the contrary. Supplier will perform its obligations under this Agreement as an independent contractor. Supplier retains the right to exercise full control of, supervision over and responsibility for Supplier's performance hereunder, including the employment, direction, compensation and discharge of Supplier's personnel, as well as compliance with workers' compensation, unemployment, disability insurance, social security, withholding and all other laws, rules, codes, regulations and ordinances governing such matters.

23.2. For any Goods provided under this Agreement, Supplier and Avecia stipulate that Avecia is deemed to be the statutory employer of Supplier's employees and all employees of any sub-tier contractor retained in any manner by Supplier, who perform services or access Avecia's property. Supplier and Avecia further stipulate that all services performed pursuant to this Purchase Order are an integral part of or essential to Avecia's production of its goods or delivery of its services.

24. Compliance with Laws and Integrity. Supplier and its subcontractors shall comply with all applicable international, national, state and local laws, regulations and ordinances in performing this Agreement. Supplier will maintain an integrity and compliance program reasonably acceptable to Avecia and effective in preventing and correcting ethical violations and in maintaining compliance with laws. The parties hereby incorporate by reference the requirements of 41 C.F.R. §§60-1.4(a), 29 C.F.R. Part 471, Appendix A to Subpart A. 41 C.F.R. §60-300.5(a)ii and 41 C.F.R. §60-741.5(a), if applicable. Supplier shall abide by and ensure that its subcontractors abide by the requirements of 41 C.F.R. §60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Supplier shall also abide by and ensure that its subcontractors abide by the requirements of 41 C.F.R. §60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities

25. Anti-Corruption Laws.

25.1. In this anti-corruption laws section, the term "Included Scope" means, both collectively and separately, the Agreement and the portions of Supplier's respective businesses that are involved in it.

25.2. In this anti-corruption laws section, "Anti-Corruption Laws" means, both collectively and separately, any anti-corruption, anti-bribery or similar governmental ethics and transparency laws that have particular jurisdiction or that govern the Included Scope in any manner. Although Supplier is responsible for determining the extent and applicability of Anti-Corruption Laws, the US Foreign Corrupt Practices Act of 1977 (the "FCPA") and the UK Bribery Act 2010 are both expressly included in the scope of "Anti-Corruption Laws" regardless of Supplier's actual residency or the actual location that services are performed and received or that goods are made, delivered and received under the Agreement

25.3. Supplier represents to the Buyer that, with respect to the Included Scope, as of entering into the Agreement:

- (a) Supplier has not violated any Anti-Corruption Laws; and
- (b) Supplier has not directly or indirectly made any offer, payment, promise to pay, or authorized payment, or offered a gift, promised to give, or authorized the giving of anything of value to any Government Official (defined as any officer, employee or person acting in an official capacity for any government department, agency or instrumentality, including state-owned or -controlled companies, and public international organizations, as well as a political party or official thereof or candidate for political office) or any other person while knowing or having reason to know that all or a portion of such money, gift or thing of value will be offered, paid or given, directly or indirectly, to any Government Official, for the purpose of (1) influencing an act or decision of the Government Official in his or her official capacity, (2) inducing the Government Official to do or omit to do any act in violation of the lawful duty of such official, (3) securing an improper advantage, or (4) inducing the Government Official to use his influence to affect or influence any act or decision of a government or instrumentality, in order to assist Avecia or any of its affiliates in obtaining or retaining business.

25.4. Supplier warrants to Avecia that, with respect to the Included Scope, and during the term of the Agreement, Supplier will:

- (a) not violate any Anti-Corruption Laws; and
- (b) not directly or indirectly make any offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value to any Government Official or any other person while knowing or having reason to know that all or a portion of such money, gift or thing of value will be offered, paid or given, directly or indirectly, to any Government Official, for the purpose of (1) influencing an act or decision of the Government Official in his or her official capacity, (2) inducing the Government Official to do or omit to do any act in violation of the lawful duty of such official, (3) securing an improper advantage, or (4) inducing the Government Official to use his influence to affect or influence any act or decision of a government or instrumentality, in order to assist Avecia or any of its affiliates in obtaining or retaining business.

25.5. Supplier represents that, unless disclosed to Avecia in a separate written statement, none of its employees, directors, officers or principals is a Government Official with jurisdiction or influence over the Included Scope. Supplier shall notify Avecia in writing within five (5) business days if at any time during the term of this Agreement any of Supplier's employees, directors, officers or principals is named, appointed, or otherwise becomes a Government Official with jurisdiction or influence over the Included Scope.

If Supplier learns or comes to have reason to know of any payment or transfer (or any offer or promise to pay or transfer) in connection with the Included Scope that would violate Anti-Corruption Laws, it shall immediately disclose it to Avecia.

26. Applicable Law and Forum. This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to that state's conflicts of law principles. The parties expressly agree to exclude the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. The Federal and State courts located within New York City, New York will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, which will be conducted in English.

27. Remedies. All remedies set forth in this Agreement are in addition to, and will in no way limit, any other rights and remedies that may be available to the parties at law or in equity.

28. Notices. All Notices relating to this Agreement must be in writing and sent to the addresses in this section. If Supplier does not provide an address below, notices to the Supplier will be sent to the address previously communicated to Avecia or via e-mail.

(1) To Avecia:
General Counsel
Nitro Americas, Inc.
300 Frank W. Burr Blvd.
Teaneck, NJ 07666

(2) To Supplier:
At the last communicated address in purchase orders.

Notices must be delivered personally, by recognized overnight courier, mailed certified first class mail postage prepaid, by facsimile transmission to the facsimile number provided by Avecia or Supplier respectively; or sent by electronic transmission (email) with proof of delivery. Any Notice will be deemed given on the date delivered if delivered personally; three business days after being placed in the mail as specified; or upon confirmation receipt that it was transmitted satisfactorily if transmitted by facsimile or electronic transmission.

29. Publicity. Supplier shall not use Avecia's name or marks, refer to or identify Avecia in any advertising or publicity releases or promotional or marketing correspondence to third parties without Avecia's prior written approval.

30. Headings and Captions. Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of any provision of this Agreement.

31. Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement will not be construed to be a continuing waiver of any provisions hereunder, nor will any such failure prejudice the right of such party to take any action in the future to enforce any provisions hereunder.

32. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be severed from this Agreement; the remaining provisions will remain in full force and effect; and a similar legal, valid and enforceable provision will be substituted in lieu of the severed provision.

33. Survival. All provisions of this Agreement which by their nature should apply beyond its term will remain in force after any termination or expiration of this Agreement including, but not limited to, those addressing the following subjects: Import/Customs Compliance; Price; Most Favored Customer and Meet or Release; Invoicing and Payment; Set Off; Warranty; Cessation of Production; General Indemnification; Intellectual Property Indemnification; Insurance; Confidentiality and Ownership of Intellectual Property; Audit; Applicable Law and Forum; Remedies; Notices; Publicity; Severability; and Survival.