

# Contract Risk Assessment Report

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## Overall Risk Assessment

37/100

Low Risk - Generally acceptable

## Executive Summary

### CONTRACT OVERVIEW:

- **Contract Title and Type:** ODM (Original Design Manufacturer) Supply Agreement
- **Primary Purpose and Scope:** The agreement establishes a relationship where Organic Preparations Inc. (Manufacturer) appoints Agape ATP International Holding Limited (Customer) as the sole and exclusive agent for the promotion, sales, marketing, distribution, and administration of specified products (listed in Schedule A) globally (Schedule C). This includes the supply of products by the Manufacturer to the Customer.
- **Effective Date and Duration:** Effective from January 15, 2018 (as indicated in the signature block of Organic Preparations INC.). The initial term is ten (10) years.
- **Governing Law and Jurisdiction:** The agreement is governed by the Laws of England (English common and statutory Law). The jurisdiction for dispute resolution (arbitration) is Switzerland (International Chamber of Commerce).

### PARTIES ANALYSIS:

- **Organic Preparations INC. (the "Manufacturer")**
  - Address: 2nd Floor, Transpacific Haus, Lini Highway, Port Vila, Vanuatu
  - Role: Manufacturer and supplier of products listed in Schedule A.
  - Legal Entity Type: Not explicitly stated, but assumed to be a corporation (INC. suggests incorporation).
  - Key Contacts/Authorized Representatives: "Duly authorized to sign on behalf of Organic Preparations INC." - the actual name of the person is missing from the provided copy, but the signature line is there. Mercy Saula is listed as a witness.
  - Subsidiaries/Affiliates: None mentioned in the provided text.
- **Agape ATP International Holding Limited (the "Customer")**
  - Address: Unit 05, 4F, Energy Plaza, No. 92, Granville Road, Tsim Sha Tsui East, Kowloon, Hong Kong
  - Role: Sole and exclusive agent for promotion, sales, marketing, distribution, and administration of the Manufacturer's products. Purchaser of products.
  - Legal Entity Type: Limited company (Limited in the name implies this).

- **Key Contacts/Authorized Representatives:** How Kok Choong (Signed under common seal of Agape ATP International Holding Limited with authority of the board.). Ku Suat Hong is listed as a witness.
- **Subsidiaries/Affiliates:** "EQUITY HOLDINGS LIMITED" - Not directly defined, but likely either a parent company or affiliated company to Agape ATP International Holding Limited. The formatting of the signature block suggests Equity Holdings Limited is signing on behalf of Agape.

## FINANCIAL TERMS:

- **Total Contract Value:** Cannot be definitively determined. The total value depends on the quantity of products purchased by the Customer throughout the contract term. The minimum annual product purchase requirements (Schedule B) provide *some* indication, but not the overall value.
- **Payment Structure:**
  - 50% of the Total Order Cost is due on placement of the Customer's order.
  - The remaining 50% is due prior to the goods leaving the Manufacturer's warehouse.
- **Payment Schedules, Milestones, and Methods:** Payment is triggered by specific events (order placement and pre-shipment). Payment methods are not specified.
- **Pricing Mechanisms:** Pricing is not defined in this agreement excerpt. It's assumed that pricing is determined separately, likely via price lists or quotations.
- **Penalties, Late Fees, and Financial Remedies:** No explicit penalty or late fee clauses are present in this document. Financial remedies would primarily arise from breaches (e.g., failure to supply products, failure to pay).
- **Currency and Exchange Rate Provisions:** The agreement references "AUS \$1.00" (Australian Dollars) in section 14.10. Other currencies are not specified, but are assumed to be agreed upon in the underlying purchase orders. Exchange rate provisions are not explicitly mentioned, leaving ambiguity about whose responsibility it is to account for any exchange rate fluctuations.

## TIMELINE & MILESTONES:

- **Contract Commencement Date:** January 15, 2018
- **Initial Expiration Date:** January 15, 2028 (10 years from commencement)
- **Renewal Options:** Automatic renewal for successive ten (10) year terms unless either party provides six (6) months' notice of termination *for reasons other than breach*.

- **Key Delivery Dates/Performance Milestones:** Determined by individual Purchase Orders placed by the Customer. Schedule B sets *minimum* annual purchase requirements.
- **Critical Deadlines:**
  - Customer has seven (7) days from receipt of products to notify the Manufacturer of any defects and request destruction or RMA.
  - If requesting an RMA, the Customer has seven (7) days from receipt of the RMA number to return the rejected product.
  - Breaching party has 21 days from notification of breach to rectify the breach (if the breach is capable of rectification).
  - 6 months notice for termination other than for breach of contract.

#### **SCOPE OF WORK:**

- **Products:** Defined as "the Products listed in Schedule A". At commencement, Schedule A includes:
  - ATP 1S Survivor Select (150gm packaged)
  - ATP 2 Energized Mineral Concentrate (29.5mL packaged)
  - ATP 3 Ionized Cal-Mag (114gm packaged)
  - ATP 4 Omega Blend (250mL packaged)
  - ATP 5 BetaMaxx (150gm packaged)
  - AGP 1 Iron (29.5mL packaged)
  - YFA Young Formula (450gm packaged)
  - ORYC Organic Soap (150gm packaged)
- **Services:** The Customer will handle promotion, sales, marketing, distribution and administration of the products. The Manufacturer will manufacture the products, ensure packaging standards, and comply with applicable laws and regulations.
- **Performance Standards and Acceptance Criteria:**
  - Minimum Annual Product Performance Requirements (Schedule B)
  - Products must be free from defects (as per Section 5.3)
  - Manufacturer must maintain compliance with local laws and regulations (Section 3.1) and international manufacturing standards (Section 3.2).
- **Quality Requirements and Specifications:** The Manufacturer guarantees packaging quality (Section 5.2) to protect products during shipment. More detailed product specifications are not included in the provided text and would be expected to be in other documents.

- **Delivery Terms:** Ex Works (EXW). This means the Manufacturer's responsibility ends when the goods are made available at their premises. The Customer is responsible for all transportation costs, insurance, and associated expenses.
- **Territories:** Global - All countries (Schedule C).

## RISK ASSESSMENT:

- **High-Risk Clauses and Potential Legal Issues:**
- **Automatic Renewal (1.3):** While seemingly beneficial, automatic renewal clauses can be problematic if market conditions change or the relationship sours. The six-month notice requirement *for reasons other than breach* provides some flexibility.
- **Intellectual Property (3.5):** Defining the "Medical Team members" as Intellectual Property could be problematic and difficult to enforce. The scope and protection afforded to a list of people is not standard intellectual property protection. The Manufacturer's indemnification for IP claims by third parties is crucial.
- **Shipping (5.1):** While EXW favors the Manufacturer, the Customer bears significant risk and expense related to shipping. Disputes could arise regarding carrier selection and damage during transit.
- **Insurance (6.1 & 6.2):** Ensuring *both* parties maintain adequate product liability insurance is critical. The Manufacturer must ensure its manufacturing companies' insurance covers the Customer, which can be difficult to verify and manage.
- **Termination (7.3(e) & (f)):** Termination rights triggered by changes in control or ownership are subjective ("absolute discretion"). This could be misused and lead to disputes.
- **Appointment and Grant of License (13.1 & 13.2):** Exclusivity tied to minimum annual purchase requirements (Schedule B) is common, but enforcement can be tricky if the Customer falls short.
- **Liability Limitations and Indemnification Terms:** The Manufacturer indemnifies the Customer against Intellectual Property claims (3.5(a)). Product liability insurance provisions (Sections 6.1 and 6.2) also provide some protection. However, there are no explicit limitations on liability for other breaches of contract.
- **Insurance Requirements and Coverage Gaps:** Both the Manufacturer (via its manufacturing companies) and the Customer must maintain product liability insurance. It's critical to verify the coverage amounts, terms, and conditions to ensure they are adequate. Coverage gaps could exist if the insurance policies don't align or if the Manufacturer's manufacturing companies fail to maintain their insurance.

- **Compliance Obligations and Regulatory Risks:** Both parties must comply with all local laws and regulations (3.1 & 4.1). This is a broad requirement and places a significant burden on both parties to stay informed about and comply with applicable laws in all territories.
- **Force Majeure and Business Continuity Provisions:** The Force Majeure clause (14.7) is relatively standard but should be reviewed carefully to ensure it covers all potential disruptions.

## TERMINATION & DISPUTE RESOLUTION:

- **Termination Triggers and Procedures:**
  - Material breach (7.3(a))
  - Insolvency or cessation of business (7.3(b))
  - Inability to perform obligations (7.3(c))
  - Assignment without consent (7.3(d))
  - Change of control or ownership deemed unsuitable (7.3(e) & (f))
- **Notice Requirements and Cure Periods:**
  - 21-day cure period for rectifiable breaches (7.2)
  - Written notice of termination required for all terminations (7.3)
- **Post-Termination Obligations and Survival Clauses:** Payment obligations and any other claims accrued *up to* the termination date survive termination. The clauses relating to intellectual property might be implied to have survival clauses, and should be clarified if this is not the case.
- **Dispute Resolution Mechanisms:** Arbitration by the Arbitration Committee of the International Chamber of Commerce located in Switzerland (8.1).
- **Governing Law and Venue Provisions:** Governing Law: English law. Venue: Switzerland (Arbitration).

## KEY RECOMMENDATIONS:

- **Critical Action Items and Immediate Concerns:**
- **Verify Insurance Coverage:** Immediately verify that both the Manufacturer and its manufacturing companies have adequate product liability insurance in place, naming the other party as an additional insured (where applicable). Review the policy terms and conditions carefully.
- **Define Pricing:** Clarify the pricing mechanism and payment terms for the products. These should be documented separately (as allowed by Section 5.4) and incorporated by reference into this agreement.
- **Review the "Medical Team" IP Definition (3.5(b)):** Consult with IP counsel to determine if this clause is enforceable and revise it to reflect a more clearly defined and protectable form of intellectual property if possible.

- **Address Automatic Renewal (1.3):** Determine whether the long-term nature of the agreement and the automatic renewal provision remain desirable given the current market conditions.
- **Obtain a fully executed and clear copy of the contract.** The provided version is missing the name of the person signing for the Manufacturer.
- **Suggested Contract Amendments or Clarifications:**
  - **Define "Material Breach":** Provide examples of what constitutes a "material breach" to reduce ambiguity and potential disputes.
  - **Exchange Rate:** Clarify currency and exchange rate provisions in purchase orders or an addendum.
  - **Shipping Responsibilities:** Elaborate on the process for carrier selection and allocation of risk for damage during transit.
  - **Liability Limitations:** Consider adding limitations on liability for certain breaches, especially those that are difficult to quantify.
  - **Audit Rights:** Grant the Customer the right to audit the Manufacturer's manufacturing processes and compliance with regulations to ensure quality and safety standards are maintained.
- **Risk Mitigation Strategies:**
  - **Due Diligence:** Conduct thorough due diligence on both parties to assess their financial stability and ability to perform their obligations under the agreement.
  - **Regular Communication:** Maintain open and regular communication between the parties to address any issues or concerns promptly.
  - **Contract Management System:** Implement a contract management system to track key dates, obligations, and performance metrics.
  - **Legal Review:** Regularly review the agreement with legal counsel to ensure it remains compliant with applicable laws and regulations.
- **Compliance Requirements and Deadlines:**
  - Ensure ongoing compliance with all local laws and regulations in all applicable territories.
  - Monitor minimum purchase requirements (Schedule B) to avoid termination for failure to meet targets.
  - Strictly adhere to notification deadlines for defective products (Section 5.3) and breach of contract (Section 7.1).

This analysis provides a detailed overview of the ODM Supply Agreement and highlights key areas for attention. It is recommended that legal counsel be consul-

ted to address the specific recommendations and ensure the agreement is appropriately tailored to the parties' needs and circumstances.



## Detailed Clause Analysis

## Clause 1 Analysis

NONE RISK

### PARTIES IDENTIFIED:

- **Organic Preparations Inc. ("the Manufacturer"):** Located in Vanuatu. Responsible for manufacturing the products, complying with laws and standards, providing documentation, ensuring IP rights, and not selling products to other parties without consent.
- **Agape ATP International Holding Limited ("the Customer"):** Located in Hong Kong. Responsible for promoting, selling, marketing, distributing, and administering the products; complying with laws; providing documentation; establishing and developing a market; paying for freight, insurance, and shipping expenses; and potentially documentation fees.
- **Medical Team Members (Listed in 3.5(b)):** Dr Lily Tomas, Dr Bernd Friedlander, Mr Markus Eistert, Dr Ed Smith, Mr Vic Cherikoff, Dr Pavel Yutsis, Dr Michael Tirant, Mr Frank Ellis, Mr Peter Davids, Dr Rutledge Taylor. Defined as the intellectual property of the manufacturer.
- **Third Parties (Implied):** Carriers for shipping (selected by Customer with Manufacturer's help), Registration authorities in the "Territories" (Schedule C), Intellectual property claimants (potential), Local and International regulatory bodies.

### KEY OBLIGATIONS & RESPONSIBILITIES:

- **Manufacturer:**
- **Manufacture and Supply Products:** (Implied) The core obligation. Details about product specifics, quantities, and quality are in Schedule A (not provided).
- **Documentation (2.1):** Provide documentation for product registration in "Territories" (Schedule C). Deadline is a "reasonable period of time."
- **Compliance (3.1, 3.2, 3.3):** Comply with local laws, international manufacturing standards, and packaging laws in all "Territories" throughout the agreement's term.
- **Ability to Perform (3.4):** Maintain the willingness and ability to fulfill all obligations.
- **Intellectual Property (3.5):** Ensure products are free from third-party IP claims and indemnify the Customer. Also, the listed medical team members are considered the manufacturer's intellectual property.

- **Exclusivity (3.6):** Not sell products listed in Schedule A to other parties without the Customer's prior written consent.
- **Packaging (5.1, 5.2):** Pack products suitably for shipment and guarantee packaging quality at the time of shipment.
- **Customer:**
- **Promotion, Sales, Marketing, Distribution, Administration (Recital a):** Act as the sole and exclusive agent for the products.
- **Documentation (2.2):** Provide documentation beneficial to the Manufacturer. Deadline is a "reasonable period of time."
- **Compliance (4.1):** Comply with all local laws and regulations.
- **Ability to Perform (4.2):** Maintain the willingness and ability to fulfill all obligations.
- **Market Penetration (4.3):** Use "best endeavours" to establish and develop the market for products in the Territories.
- **Shipping Costs (5.1):** Pay freight, insurance, and associated expenses.
- **Carrier Selection (5.1):** Help select the most appropriate carrier.
- **Documentation Costs (2.1):** Pay documentation fees and costs for product registration.

#### **DATES & TIMELINE EVENTS:**

- **Agreement Date:** 2018-01-15
- **Commencement Date (1.1):** 2018-01-15 (Upon execution)
- **Initial Term (1.2):** Ten (10) years from 2018-01-15.
- **Renewal (1.3):** Automatic renewal every ten (10) years.
- **Renewal Dates:** 2028-01-15, 2038-01-15, etc.
- **Termination Notice (1.3):** Six (6) months' notice required before the end of any ten-year term for termination "due to any reason other than breach."
- **Documentation Provision (2.1, 2.2):** "Reasonable period of time" to provide documentation after a request. This is a vague deadline.

#### **TERMINATION & RENEWAL PROVISIONS:**

- **Termination Triggers:**
- Breach of agreement (Implied, not explicitly defined but alluded to in 1.3).
- Notice of intention to terminate given six (6) months before the end of a ten (10) year term (1.3).
- **Notice Requirements:** Six (6) months written notice before the end of a ten-year term for termination for reasons *other* than breach.

- **Renewal:** Automatic renewal for successive ten (10) year terms unless proper notice is given.
- **Post-Termination Obligations:** Not explicitly stated. Implied obligations would likely involve winding down operations, returning confidential information, and resolving any outstanding payments. This needs clarification in a full agreement.

#### **RISK FACTORS & LEGAL CONCERNS:**

- **Perpetual Renewal:** The automatic renewal clause (1.3) creates a *perpetual* agreement if no action is taken. This can be problematic. A well-drafted contract usually limits automatic renewals.
- **Vague Deadlines:** "Reasonable period of time" for providing documentation (2.1, 2.2) is ambiguous and could lead to disputes. Specific deadlines should be set.
- **"Best Endeavours" (4.3):** The Customer's obligation to use "best endeavours" for market penetration is a weaker standard than "reasonable endeavours" or "all reasonable endeavours." This gives the Customer significant leeway.
- **Unclear Termination for Breach:** The agreement implies termination for breach, but the process and consequences are not defined. This is a major omission.
- **Lack of Dispute Resolution:** No mention of governing law, jurisdiction, or dispute resolution mechanisms (e.g., arbitration).
- **Scope of "Territories":** Schedule C, defining the "Territories," is crucial but not provided.
- **Definition of "Products":** Schedule A, defining the products, is crucial but not provided.
- **Intellectual Property Definition:** The scope of what constitutes the IP associated with the medical team is unclear. Is it just their names? Or their consulting work? Does the Customer have any rights to independently contract with them?
- **Ex Works (5.1):** The delivery term "Ex Works" places significant responsibility and risk on the Customer from the point the goods leave the Manufacturer's premises.
- **Indemnification (3.5a):** The indemnification provided by the Manufacturer should be reciprocal to provide protection to the Manufacturer from actions by the Customer.

## KEY TERMS & DEFINITIONS:

- **ODM:** Original Design Manufacturer – meaning Organic Preparations INC. is manufacturing products according to a design and/or specification provided by Agape ATP International Holding Limited
- **Manufacturer:** Organic Preparations Inc.
- **Customer:** Agape ATP International Holding Limited
- **Products:** As defined in Schedule A (Not provided).
- **Territories:** As defined in Schedule C (Not provided).
- **Local Laws and Regulations:** Laws and regulations within each Territory (undefined).
- **International Standards:** Pertaining to production and manufacturing (unspecified).
- **Intellectual Property:** Includes the compositions of the listed medical team.
- **Ex Works:** (Incoterms term) Means the Customer bears all costs and risks involved in taking the goods from the Manufacturer's premises.
- **Purchase Order:** The Customer's written or electronic order for products.

## PRODUCTS/SERVICES/DELIVERABLES:

- **Products:** Specific items listed in Schedule A (Not provided).
- **Documentation:** Information required for product registration in the Territories.

**Actionable Insights & Recommendations:** 1. **Renegotiate the Renewal Clause:** Change the automatic renewal to an option to renew that requires affirmative action from both parties. Consider limiting the number of renewal terms. 2. **Define "Reasonable Period of Time":** Replace "reasonable period of time" with specific deadlines (e.g., "within 30 days of request"). 3. **Strengthen "Best Endeavours":** Consider a higher standard such as "all reasonable endeavours" or "reasonable endeavours" if the Customer is expected to drive market penetration. Otherwise, clarify the specific actions the Customer is required to take. 4. **Explicit Termination Clause:** Add a detailed termination clause specifying the grounds for termination (including material breach), the notice period required, the procedure for termination, and the consequences of termination (e.g., return of confidential information, payment of outstanding invoices, etc.). 5. **Include a Dispute Resolution Clause:** Add a clause specifying the governing law, jurisdiction, and a dispute resolution mechanism (e.g., arbitration or mediation). 6. **Review and Clarify IP Clause:** Define the specific IP associated with the listed medical team and the respective rights of each party. 7. **Add Reciprocal Indemnification:** Include a provision requiring the Customer to indemnify the Manufacturer for any damages,

losses, or liabilities arising from the Customer's actions (e.g., improper marketing, regulatory violations). 8. **Define Standards:** Make sure the relevant standards for packaging and manufacturing are well-defined. 9. **Define Payment Terms:** Add payment terms, including amounts due, payment schedule, and acceptable methods of payment. This analysis highlights potential issues and provides actionable recommendations to strengthen the agreement and mitigate risk. Legal counsel should be consulted for a thorough review and revision of the entire agreement.

## ● Clause 2 Analysis

MEDIUM RISK

### PARTIES IDENTIFIED:

- **Organic Preparations INC.:** Referred to as the Manufacturer. Responsibilities include manufacturing products per Schedule A, suitably packing products for shipment, guaranteeing packaging quality, providing RMA numbers, crediting the Customer for defective products (if determined to be so), notifying the Customer when goods are ready for shipment, and maintaining product liability insurance.
- **Agape ATP International Holding Limited:** Referred to as the Customer. Responsibilities include paying freight, insurance, and associated expenses; helping the Manufacturer select the most appropriate carrier; inspecting products promptly; notifying the Manufacturer of rejected products within seven days; requesting to destroy rejected products in field for credit (with approval), or requesting and returning rejected products with an RMA; paying for orders according to the payment terms; and maintaining product liability insurance naming the Manufacturer as Additional Insured.
- **Omer (Mentioned in opening covenant):** Distributor (inferred, as it's developing a market). Responsibilities include using best endeavors to establish and develop a market for the Products in the Territories with maximum market penetration.
- **Agent:** Utilizes manufacturing companies to manufacture products (as mentioned in 6.1)

### KEY OBLIGATIONS & RESPONSIBILITIES:

- **Omer (Distributor):** Obligated to use "best endeavors" to develop a market. This is a vague standard, open to interpretation. What constitutes "best endeavors" needs further definition to be enforceable.
- **Manufacturer (Organic Preparations INC.):**
- **Manufacturing and Packaging:** Manufacture products per Schedule A (Schedule A not provided, so content is unknown). Pack products in standard shipping cartons marked for specified destinations and delivered "Ex Works." Guarantees packaging quality to protect from foreseeable damage during shipment.
- **RMA Process:** Issues RMA numbers for returned defective products.
- **Credit for Defective Products:** Credits Customer for the value of defective products and associated shipping costs *if* the Manufacturer determines the

product was defective and properly rejected. This leaves considerable discretion with the Manufacturer.

- **Insurance:** Maintains product liability insurance to cover liability of the Customer and to indemnify the Customer from any costs, expenses, loss or damages resulting from any act, neglect or default of the manufacturing company.
- **Notification of Shipment:** Notifies the Customer when goods are ready for shipment.
- **Customer (Agape ATP International Holding Limited):**
- **Shipping Costs:** Pays for freight, insurance, and associated shipping expenses. Helps select the most appropriate carrier.
- **Inspection and Rejection:** Inspects products "promptly" upon receipt. This is vague; promptness should be defined (e.g., "within 24 hours"). Notifies Manufacturer of rejected products within seven (7) days of receipt. Requests destruction or returns with an RMA.
- **Payment:** Pays 50% of the total order cost upon placement of the order and the remaining 50% before the goods leave the Manufacturer's warehouse.
- **Insurance:** Maintains product liability insurance covering all products sold, naming the Manufacturer as an Additional Insured. Coverage amount and terms are not specified, which could be problematic.
- **Agent:** Utilizes manufacturing companies to manufacture products.

#### **DATES & TIMELINE EVENTS:**

- **2019-12-02:** Source document date.
- **Seven (7) days (rejection):** Customer has seven days after receipt of products to notify the Manufacturer of rejection and request disposition. This is a tight timeframe and could be problematic if inspection requires specialized equipment or expertise.
- **Seven (7) days (return):** Customer has seven days from receipt of the RMA number from the Manufacturer to return the rejected product.
- **Twenty-One (21) days (breach rectification):** Breaching party has 21 days from notification of a rectifiable breach to fix it.
- **Thirty (30) consecutive days (termination):** Termination is triggered if either party ceases to do business for 30 consecutive days (excluding annual holidays).

#### **TERMINATION & RENEWAL PROVISIONS:**

- **Termination Triggers:**
- Material breach not rectified within 21 days of written notice.



- Winding up or bankruptcy of either party.
- Appointment of a receiver of the distributor's assets.
- Cessation of business for 30 consecutive days (excluding holidays).
- Being substantially prevented from performing obligations (other than a default of the other party).
- Assignment of the agreement without prior written consent.
- Change of control deemed "unsuitable" by the other party (subjective).
- Transfer of voting stock resulting in a change of control.
- **Notice Requirements:** Written notice of termination is required and is effective immediately upon service.
- **No Renewal Terms:** The agreement is silent on renewal terms, suggesting it does not automatically renew.
- **Post-Termination Obligations:** Termination is without prejudice to rights to payment or other claims accrued up to the termination date.

#### **RISK FACTORS & LEGAL CONCERNS:**

- **"Best Endeavors" Standard:** The "best endeavors" clause for Omer (the distributor) is vague. This is a low standard. The agreement should define specific marketing activities and measurable targets to make the obligation enforceable.
- **Customer's "Prompt" Inspection:** The requirement for "prompt" inspection is ambiguous. The agreement should define a specific timeframe (e.g., within 24 or 48 hours).
- **Manufacturer's Discretion on Defect Determination:** The Manufacturer has significant discretion in determining if a product is defective and "properly rejected." This is one-sided and could lead to disputes. An independent quality control process or objective standards for defect determination should be considered.
- **Insurance Coverage Gaps:** The agreement requires both parties to maintain product liability insurance, but it doesn't specify the coverage amounts, deductibles, or specific policy terms. This could result in inadequate coverage and disputes over liability. Minimum coverage amounts should be specified.
- **Subjective "Unsuitable" Change of Control:** The termination trigger based on a change of control deemed "unsuitable" by the other party is highly subjective and ripe for abuse. Objective criteria for suitability (e.g., financial stability, experience in the industry) should be defined.
- **Lack of Consequential Damage Waiver:** The agreement doesn't contain a waiver of consequential damages. This means either party could be liable for

potentially unlimited indirect damages, such as lost profits, resulting from a breach.

- **Missing Schedule A:** The agreement references Schedule A, which lists the products being manufactured. This schedule is crucial for understanding the scope of the agreement and the Manufacturer's obligations. Its absence is a major deficiency.
- **Ex Works:** The Products are delivered "Ex Works" which essentially places all the transport risk to the Customer.
- **Termination effective immediately upon service:** This does not give the party time to prepare for the termination or adjust to it.

#### KEY TERMS & DEFINITIONS:

- **Products:** The specific products manufactured by Organic Preparations INC. as listed in Schedule A (missing).
- **Territories:** Geographic areas where Omer (the distributor) is supposed to develop a market. These should be explicitly defined.
- **Maximum Market Penetration:** The goal of Omer's (the distributor) marketing efforts. This is also vague and should be defined with specific, measurable goals.
- **Ex Works:** A shipping term indicating that the seller (Manufacturer) fulfills its obligation to deliver when it has made the goods available at its premises (i.e., the works, factory, warehouse). The buyer (Customer) bears all costs and risks of taking the goods from that point.
- **Total Order Cost:** The total price for the customer's order.
- **RMA (Return Material Authorization):** A process for returning defective products.

#### PRODUCTS/SERVICES/DELIVERABLES:

- **Products:** Organic Preparations INC. manufactures the products listed in Schedule A (which is missing). Specifications, quantities, and quality standards are not provided in the excerpt.
- **Services:** Omer (the distributor) provides marketing services to establish and develop a market for the Products.
- **Deliverables:** Physical products manufactured and shipped by Organic Preparations INC. Marketing services by Omer.

This detailed analysis highlights potential risks and areas requiring clarification or amendment to protect both the Manufacturer and the Customer. It is essential to consult with legal counsel to address these issues and ensure the agreement ac-

curately reflects the parties' intentions and obligations. Specifically, obtaining and reviewing Schedule A is critical to understanding the agreement's scope.

## ● Clause 3 Analysis

MEDIUM RISK

### PARTIES IDENTIFIED:

- **Manufacturer:** Not specifically named, but owns the intellectual property of the products in Schedule A and the book 'How to Achieve Super Health beyond 2000 – Advanced Edition'. Responsible for supplying products, granting an exclusive agency, and offering first right of refusal for intellectual property. Can not transfer or assign any of its rights or obligations under this agreement without the prior written consent of the Customer.
- **Customer:** Organic Preparations INC. Appointed as the sole and exclusive agent for promotion, sales, marketing, distribution, and administration of the products in Schedule A. Must fulfill minimum annual product purchase requirements as listed in Schedule B. Has first right of refusal to purchase the intellectual property for the products listed in Schedule A of this agreement based upon agreed terms. May not freely transfer or assign its rights or obligations under this agreement without the prior written consent of the Manufacturer.
- **Agape ATP International Holding Limited:** Mentioned as the co-party with Organic Preparations INC. Presumably, this is a parent or related entity to Organic Preparations INC., although the exact relationship is not explicitly defined. This raises a risk, as only Organic Preparations INC. is explicitly bound.
- **Third Parties:** Referenced generally in relation to stock transfers that could trigger termination. Also in relation to transfers of intellectual property.
- **Arbitration Committee of the International Chamber of Commerce (located in Switzerland):** This committee is designated as the arbitrator for disputes. This is a neutral third party.

### KEY OBLIGATIONS & RESPONSIBILITIES:

- **Manufacturer:**
- **Supply Products:** Must supply products listed in Schedule A to the Customer, according to minimum annual purchase requirements detailed in Schedule B. Quality and specifications are *not* defined in the excerpt.
- **Grant Exclusive Agency:** Grants the Customer sole and exclusive rights for promotion, sales, marketing, distribution, and administration of products listed in Schedule A.
- **Offer First Right of Refusal:** Must offer the Customer the first right of refusal to purchase the intellectual property for products listed in Schedule A, based on "agreed terms." The lack of specific terms here is a major risk.

- **Maintain Intellectual Property:** Must maintain ownership of its intellectual property
- **Customer (Organic Preparations INC.):**
- **Promote, Sell, Market, Distribute, and Administer Products:** Act as the exclusive agent for the products listed in Schedule A.
- **Meet Minimum Purchase Requirements:** Fulfill the minimum annual product purchase requirements specified in Schedule B. Failure to do so could impact the duration of the agreement or other potential penalties.
- **Consider Intellectual Property Purchase:** Consider purchasing the intellectual property when offered. There is no obligation to purchase, only to be offered the first right.
- **Payment Terms:** Specific payment terms (amounts, schedules, currency) are *not* included in the provided contract excerpt. This is a critical omission. Schedule B will likely include pricing.

#### **DATES & TIMELINE EVENTS:**

- **Agreement Signing Date:** Implied, but not explicitly stated. The term of the agreement is calculated from the date of signing.
- **Ten-Year Term:** Section 13.2 specifies an initial term of ten (10) years from the date of signing.
- **Indefinite Period:** Following the initial ten-year term, the agreement continues for an indefinite period *if* the Customer fulfills the minimum annual purchase requirements as listed in Schedule B. This creates a perpetual license if the performance requirements are met.
- **Notice of Termination:** Termination takes effect immediately upon service of written notice. Deemed service is defined in 14.1.
- **2000:** The book listed, 'How to Achieve Super Health beyond 2000 – Advanced Edition' implies publication sometime after the year 2000.

#### **TERMINATION & RENEWAL PROVISIONS:**

- **Termination Triggers:**
- Implied Termination due to transfer of party stock, or a change in effective control of the company or its ownership or active management is changed in any other manner.
- Potential termination if the Customer fails to meet the minimum annual purchase requirements (Schedule B). While not explicitly stated, it's likely implied.
- Breach of contract is a standard termination trigger (though not explicitly mentioned).

- Transfer of "property" from present shareholders, owners, or controllers to persons that the party shall in their absolute discretion regard as unsuitable
- **Notice Requirements:**
  - Written notice of termination is *required* for termination to be effective.
  - Notice is deemed served: One day after posting for ordinary mail; same day for facsimile or personal delivery.
- **Renewal:** The agreement renews indefinitely, subject to the Customer's continued fulfillment of the minimum annual purchase requirements in Schedule B.
- **Post-Termination Obligations:**
  - Outstanding payment or other claims accrued up to termination *must* be paid. The excerpt does *not* address the return of intellectual property, inventory, or other assets post-termination. This could lead to disputes.

## **RISK FACTORS & LEGAL CONCERNS:**

- **Ambiguous Language:**
  - "Agreed terms" for the purchase of intellectual property (Section 12) is *highly* ambiguous. What constitutes "agreed terms"? This is a significant source of potential dispute.
  - "Effective control" is vague (Section (f)). What percentage of stock constitutes effective control? This should be defined more clearly. The definition should also account for *de facto* control through other means (e.g., shareholder agreements, board control).
  - "Unsuitable" in regards to party stock transfers, what defines unsuitable?
- **One-Sided or Unfair Terms:**
  - The Manufacturer's assignment rights are restricted, requiring the Customer's consent, whereas the Customer's rights are *also* restricted. This is potentially unbalanced, depending on the bargaining power of the parties.
  - The manufacturer's "absolute discretion" to decide who can accept transfer of party stock opens up liability concerns for the manufacturer.
- **Missing Protections:**
  - No provisions are included for quality control, product liability, or warranty. The Customer is assuming significant risk here.
  - Payment terms are missing. This is a crucial omission that needs to be rectified immediately.
  - Confidentiality/Non-Disclosure Agreement (NDA) is missing. This is extremely important given the potential transfer of proprietary information.

- No performance metrics (beyond minimum purchase requirements) are in place. How will the success of the Customer's promotion, sales, and marketing efforts be measured?
- **Compliance Issues:** The agreement involves international parties and the governing law is English law. This introduces complex regulatory and compliance considerations (e.g., export controls, product safety regulations, tax laws).

#### KEY TERMS & DEFINITIONS:

- **Intellectual Property:** The specific intellectual property is defined as pertaining to the products listed in Schedule A and the book 'How to Achieve Super Health beyond 2000 – Advanced Edition'.
- **Sole and Exclusive Agent:** This means the Customer is the *only* party authorized to promote, sell, market, distribute, and administer the products in the territory defined by the agreement. The territory is *not* explicitly stated.
- **Force Majeure:** Defined as certain events (war, government action, natural disasters, etc.) that excuse performance. The listed events are fairly standard.
- **Minimum Annual Product Purchase Requirements:** Defined as what is listed in Schedule B, this quantity is likely the key to maintaining exclusivity and an indefinite agreement term.
- **Effective Control:** What defines an "effective control" is not defined, raising liability concerns.

#### PRODUCTS/SERVICES/DELIVERABLES:

- **Products:** Defined as those "listed in Schedule A." The specific products are *not* detailed in the provided excerpt. This is crucial information.
- **Services:** Promotion, sales, marketing, distribution, and administration of the products.
- **Deliverables:** The Customer's primary deliverable is meeting the minimum annual product purchase requirements. The Manufacturer's deliverable is supplying the products.

In summary, this contract section has significant gaps and areas of ambiguity that need to be addressed before the agreement is finalized. Specifically, the missing payment terms, lack of quality control provisions, undefined "agreed terms" for IP purchase, and the ambiguity around "effective control" and "unsuitable" constitute major risks. I would strongly recommend that Organic Preparations INC. seek legal counsel to negotiate these points and ensure that the agreement adequately protects its interests.

## ● Clause 4 Analysis

### MEDIUM RISK

Here is a comprehensive analysis of the provided contract section, structured according to your specifications.

#### **PARTIES IDENTIFIED:**

- **Manufacturer:** Likely Organic Preparations INC., responsible for designing, formulating, and supplying products.
- **Customer:** Agape ATP International Holding Limited, responsible for marketing, promotion, and sales of products (including new products), sourcing products outside of Schedule A (under certain conditions), compensating the manufacturer for book printing.
- **Authors:** Frank D.P. Ellis and Dr. Michael Tait M.D., authors of "How to Achieve Super Health beyond 2000 – Advanced Edition." Though not parties to the agreement, their rights are affected.
- **Equity Holdings Limited:** A company signing on behalf of Agape ATP International Holding Limited. Role is signatory.
- **Witnesses:** Mercy Saula and Ku Suat Hong.
- **Principal:** Refers to one of the parties (likely the Manufacturer), in the context of the Force Majeure clause.

#### **KEY OBLIGATIONS & RESPONSIBILITIES:**

- **Manufacturer (Organic Preparations INC.):**
  - Design and formulation of new products.
  - Provide the Customer with one new product per quarter (minimum four new products per year).
  - Provide the Customer with exclusive rights to marketing, promotion, and sales of new products, should the Customer decide to take them on.
  - Grant the Customer copyright of "How to Achieve Super Health beyond 2000 – Advanced Edition" (both English and Chinese versions), provided the Customer fulfills and maintains the criteria of the agreement.
  - Maintain focus on design and formulation of new products.
  - Supply products according to Schedule A and minimum annual performance requirements in Schedule B.
- **Customer (Agape ATP International Holding Limited):**
  - Consider, source, promote, market, and sell products outside of Schedule A, provided they are non-competing.



- Provide the Manufacturer with prior notification of printing runs for the book "How to Achieve Super Health beyond 2000 – Advanced Edition," including the quantity of books to be printed.
- Compensate the Manufacturer AUS \$1.00 per book prior to printing.
- Purchase minimum annual quantities of products as outlined in Schedule B.
- Obtain consent before transfer or assignment.
- **Shared Responsibilities:**
  - Both parties are responsible for upholding their obligations under the agreement, subject to the Force Majeure clause.
  - Both parties are bound by the confidentiality provisions implied by the "prior written consent" requirement for assignment and transfer.

#### **DATES & TIMELINE EVENTS:**

- **2018-01-15:** Date of signature by Equity Holdings Limited on behalf of Organic Preparations INC.
- **2018-01-31:** Date of signature by How Kok Choong on behalf of Agape ATP International Holding Limited.
- **Quarterly Deliveries of New Products:** The Manufacturer must provide one new product each quarter. The timing within each quarter is not specified, making it potentially ambiguous.
- **Annual Performance Targets:** Customer must meet the minimum product performance quantities listed in Schedule B annually. The start date for the annual period is not specified (likely the effective date of the agreement).
- **2019-12-02:** Date of the 10-K/A filing.

#### **TERMINATION & RENEWAL PROVISIONS:**

- **Termination:** The provided sections do not explicitly outline termination clauses. Termination could be triggered by:
  - Breach of contract by either party. The consequences of the customer not fulfilling the criteria to copyright assignment are not explicit.
  - Force Majeure events potentially leading to prolonged inability to perform. (Implied, but not explicitly stated).
- **Renewal:** The provided sections do not mention renewal terms.
- **Post-Termination Obligations:** No specific post-termination obligations are detailed in these sections. What happens to the copyright assignment if the agreement terminates?

#### **RISK FACTORS & LEGAL CONCERNS:**

- **Ambiguous Language:**

- The phrase "fulfills and maintains the criteria of this agreement" regarding copyright assignment is vague. What specific criteria are being referred to, and what happens if those criteria are not met? This needs to be explicitly defined.
- The timing within each quarter for the delivery of new products is not specified, which could lead to disputes.
- The "fair and reasonable performance targets" in Schedule B lacks a concrete definition. How is it determined that performance targets are not fair or reasonable?
- **One-Sided Terms:**
  - The Force Majeure clause, while seemingly balanced, may be more beneficial to the Manufacturer, especially given its potential for wide interpretation.
- **Missing Protections/Safeguards:**
  - The contract lacks explicit provisions for intellectual property protection regarding the new products designed by the Manufacturer. Who owns the IP rights?
  - No dispute resolution mechanism (e.g., arbitration, mediation) is specified.
  - Confidentiality provisions are not explicitly stated.
  - No governing law or jurisdiction is specified.
- **Compliance Issues:** Depending on the nature of the products, there may be regulatory compliance issues related to labeling, manufacturing, and distribution within the "Global – All countries" territory.
- **Assignment without consent:** The general opening statement doesn't clarify what happens if assignment is done without consent. Is the assignment null and void or does it create a breach?

#### KEY TERMS & DEFINITIONS:

- **Force Majeure:** An event or circumstance beyond the reasonable control of a party, preventing or delaying performance.
- **Successors and Assignees:** Entities that legally inherit the rights and obligations of a party.
- **Non-Competing Products:** Products that do not directly compete with the products listed in Schedule A. A precise definition is needed (e.g., based on target market, ingredients, or function).
- **Principal:** Likely the Manufacturer, but should be explicitly defined in the agreement.
- **Product Performance Requirements:** The minimum quantity of units to be purchased per annum for each product, as listed in Schedule B.

## PRODUCTS/SERVICES/DELIVERABLES:

- **Products Listed in Schedule A:**

- ATP 1S Survivor Select (150gm packaged)
- ATP 2 Energized Mineral Concentrate (29.5mL packaged)
- ATP 3 Ionized Cal-Mag (114gm packaged)
- ATP 4 Omega Blend (250mL packaged)
- ATP 5 BetaMaxx (150gm packaged)
- AGP 1 Iron (29.5mL packaged)
- YFA Young Formula (450gm packaged)
- ORYC Organic Soap (150gm packaged)
- **New Products:** One new product per quarter, designed and formulated by the Manufacturer. Specifications, quality standards, and acceptance criteria are not detailed.
- **Book:** "How to Achieve Super Health beyond 2000 – Advanced Edition" (English and Chinese versions).
- **Territories:** "Global – All countries" (Schedule C).
- **Quantity:** The number of units for each listed product to be purchased per annum, as defined in Schedule B.
- **Packaging:** specified for each product in Schedule B, should be clarified if this refers to specific types of packaging or is simply a size specification.
- **Minimum Annual Product Performance Requirements:** Outlined in Schedule B; must be achieved annually.

## Actionable Insights:

- **Define Vague Terms:** Clarify the meaning of "fulfills and maintains the criteria of this agreement," "fair and reasonable performance targets," and "non-competing products."
- **Specify Deadlines:** Provide more precise deadlines for the delivery of new products (e.g., the last day of each quarter).
- **Add Termination Clause:** Include a clear termination clause specifying the grounds for termination, notice periods, and post-termination obligations.
- **Address Intellectual Property:** Explicitly state ownership of intellectual property rights related to new products.
- **Include Dispute Resolution:** Add a dispute resolution mechanism (e.g., arbitration or mediation).
- **Define Governing Law:** Specify the governing law and jurisdiction for the contract.

- **Confidentiality Clause:** Explicitly include confidentiality provisions.
- **Clarify product specifications:** Add specific quality standards and acceptance criteria for both existing and new products.
- **Examine territory:** Add a statement indicating how the product will comply with local regulations and compliance standards for products being sold globally.
- **Specify Consequences of Assignment without consent:** Clarify what happens if the Customer or Manufacturer breaches the assignment clause and makes an unauthorized assignment.
- **Clarify the term "Principal":** Make sure that the term "Principal" is clearly defined.
- **Clarify "Packaging":** Clarify if this refers to specific types of packaging or is simply a size specification.

This detailed analysis should provide a solid foundation for understanding the obligations, risks, and potential issues within the provided contract section. Remember to consult with legal counsel for specific advice related to your situation.

## Contract-Level Risk Factors

MEDIUM

### Missing Termination Clause

No clear termination-for-convenience clause found.

## Risk Distribution Overview



Clause 1  
NONE



Clause 2  
MEDIUM



Clause 3  
MEDIUM



Clause 4  
MEDIUM

## Risk Analysis Details

### ● Clause 2 Risk Analysis

...to be protected from any foreseeable damage during shipment.  
5.3 Rejection of defective products The Customer shall inspect all Products promptly upon receipt thereof and **MAY** reject any defective Product, provided that the Customer shall within seven (7) days after receipt of such alleged defective Product, notify the Manufacturer of its...

MEDIUM

Flagged keyword: "may"

### ● Clause 3 Risk Analysis

...thereafter, nor shall the waiver of either party of a breach of any provision hereof be taken or held to be a waiver of a provision itself. 14.6 Assignment The Manufacturer **MAY** not transfer or assign any of its rights or obligations under this agreement without the prior written consent of the Customer. The Customer **MAY** not freely transfer or...

MEDIUM

Flagged keyword: "may"

## ● Clause 4 Risk Analysis

ut the prior written consent of the Customer. The Customer  
**MAY** not freely transfer or assign its rights or obligations  
under this agreement without the prior written consent of the  
Manufacturer. Subject to the foregoing, this...

MEDIUM

Flagged keyword: "may"

## Potential Legal Loopholes

### ● Clause 2 - Potential Issues



*Ambiguous phrasing: 'may'*

### ● Clause 3 - Potential Issues



*Ambiguous phrasing: 'may'*

### ● Clause 4 - Potential Issues



*Ambiguous phrasing: 'may'*

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This automated analysis should be reviewed by qualified legal counsel.