



**MOD Terms and Conditions for Less
Complex Requirements
(up to £118,133)**

1 Definitions - In the Contract:

The Authority means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

Business Day means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

Contract means the agreement concluded between the Authority and the Contractor, including all terms and conditions, associated purchase order, specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

Contractor means the person, firm or company specified as such in the purchase order;

Contractor Commercially Sensitive Information means the information listed as such in the purchase order, which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule to the purchase order;

Effective Date of Contract means the date stated on the purchase order or, if there is no such date stated, the date upon which both Parties have signed the purchase order;

Firm Price means a price excluding Value Added Tax (VAT) which is not subject to variation;

Hazardous Contractor Deliverable means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Legislation means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

Notices means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

Parties means the Contractor and the Authority, and Party shall be construed accordingly;

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

2 General

- a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.
- c. If there is any inconsistency between these terms and conditions and the purchase order or the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
 - (1) the terms and conditions;
 - (2) the purchase order; and
 - (3) the documents expressly referred to in the purchase order.
- d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.
- f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the

English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

3 Application of Conditions

- a. The purchase order, these terms and conditions and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.
- b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

4 Disclosure of Information

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1).

5 Transparency

- a. Subject to Clause 5.b, but notwithstanding Clause 4, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with Clause 5.a, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, including the Contractor Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 5.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this Clause 5 shall affect the Contractor's rights at law.

6 Notices

- a. A Notice served under the Contract shall be:
 - (1) in writing in the English Language;
 - (2) authenticated by signature or such other method as may be agreed between the Parties;
 - (3) sent for the attention of the other Party's representative, and to the address set out in the purchase order;
 - (4) marked with the number of the Contract; and
 - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the purchase order, by electronic mail.
- b. Notices shall be deemed to have been received:
 - (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
 - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
 - (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

7 Intellectual Property

- a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of

any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.

b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim

8 Supply of Contractor Deliverables and Quality Assurance

a. This Contract comes into effect on the Effective Date of Contract.

b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Schedule to the purchase order.

c. The Contractor shall ensure that the Contractor Deliverables:

- (1) correspond with the specification;
- (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
- (3) comply with any applicable Quality Assurance Requirements specified in the purchase order.

d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

9 Supply of Hazardous Contractor Deliverables

a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 9. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Schedule to the purchase order:

- (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
- (2) the International Maritime Dangerous Goods (IMDG) Code;
- (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
- (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

b. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

c. As soon as possible and in any event within the period specified in the purchase order (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority's representatives in the manner and format prescribed in the purchase order:

- (1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and
- (2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at Clause 9.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under Clause 9.c shall be provided in accordance with the REACH Regulations (EC) No

1907/2006 and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:

- (1) Information required by the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof; and
- (2) where the Hazardous Contractor Deliverable is, contains or embodies a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope); and
- (3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed.

e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority in accordance with Clause 9.d for 4 years after the end of the Contract and shall make them available to the Authority's representatives on request.

f. Nothing in this Clause 9 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

10 Delivery / Collection

a. The purchase order shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.

b. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

11 Marking of Contractor Deliverables

a. The Contractor shall ensure that each Contractor Deliverable is marked clearly and indelibly:

- (1) in accordance with the requirements specified in the purchase order, or if no such requirement is specified, with the MOD stock reference number, NATO Stock Number (NSN) or alternative reference number specified in the Schedule to the purchase order;
- (2) where the Contractor Deliverable has a limited shelf life, the marking shall include: the expiry date / date of manufacture, expressed as specified in the purchase order, or in the absence of such requirement, as month (letters) and year (last two figures); and
- (3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

b. Where it is not possible to mark a Contractor Deliverable with the required particulars, these should be included on the package in which the Contractor Deliverable is packed.

12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)

The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the purchase order and Def Stan 81-041 (Part 1 and Part 6).

13 Progress Monitoring, Meetings and Reports

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the purchase order and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings.

14 Payment

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 14b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

- b. Where the Contractor submits an invoice to the Authority in accordance with clause 14a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 14b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 14c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

15 Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to Clause 15.a the dispute shall be referred to arbitration and shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

16 Termination for Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

- a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):
 - (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
 - (3) has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. the Authority shall:
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
 - (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that

of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

- c. Where the Contract has been terminated under Clause 16.a. the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

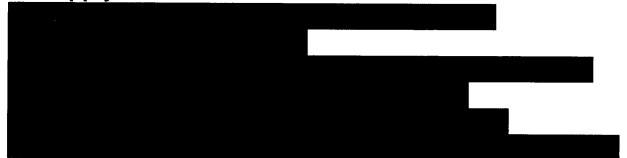
17 Material Breach

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. Where the Authority has terminated the Contract under Clause 17 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.

18 Insolvency

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

19 The project specific DEFCONs and DEFCON SC variants that apply to this Contract are:



20 The special conditions that apply to this Contract are:

20.1 Limitation of Contractor's Liability - Not Used

20.2 Copyright – Not Used

20.3 Scope of Contract

- a. The Contract shall cover the provision of Pylon Interface Cartridges in support of the Apache Mk1(AH) (hereinafter all of which is referred to as the 'Contractor Deliverables') in accordance with the Schedule of Requirements to the Contract.
- b. On contract award the Authority shall order quantities specified in the Statement of Requirements / SC1APO.

20.4 Period of Contract

The Contract shall commence from the date of the Authorities unqualified acceptance of your tender and shall expire (1) one year from this date.

20.5 Price

Unless otherwise stated, the prices under Item No 1 of the Schedule of Requirements to Contract shall be Firm (i.e. not subject to variation) exclusive of VAT but inclusive of all packaging and delivery in accordance with the Contract and any costs for the importation of Contractor Deliverables from outside of the UK.

20.6 Consideration – Not Used

20.7 Authority to Proceed

- a. For Contractor Deliverables to the Contract, the receipt of a Purchase Order under Contracting, Purchasing & Finance (CP&F) System shall be authority for the Contractor to proceed with the supply of the Contractor Deliverables requested.

20.8 Packaging

The Contractor Deliverables are to be packed in accordance with the requirements of Clause 12 and as specified within the Schedule of Requirements.

20.9 Delivery

- a. The Contractor shall ensure the Contractor Deliverables are delivered to the Authority's Consignee Address specified within the Statement of Requirements..
- b. The Authority shall continually monitor delivery lead times against all its orders to ensure contractual compliance in accordance to Contract. The Contractor shall advise the Authority as soon as reasonably practicable of the occurrence of any factor which may jeopardise any delivery date from being met.
- c. The delivery lead time shall commence from the date that the Authority issues a Purchase Order on CP&F System.

20.10 Invoicing and Payment

Claims for payment of Contractor Deliverables under Items Number 1 of Schedule of Requirements to Contract shall be made in accordance with the procedure stated under Condition 21.a and Clause 14.

20.11 Quality Assurance

- a. In addition to the Quality Assurance Requirement at SC1APO and Clause 8, the following Conditions shall apply:-
 - (1) No second hand or previously used material not owned by the Authority shall be supplied in furtherance of this Contract without the express written permission of the Authority's Project Manager (APM) at Box 2 to DEFFORM 111 (Annex A to Schedule 3). The APM will require the full history of any such material.
 - (2) Fault Reporting and Investigation in accordance with MRP RA 5404 Issue 2 (Includes Government Material), RA 1400 Series – Occurrence Reporting, RA 4814 Issue 3 – Fault Reporting, RA 4810 (3) Issue 4 Amendment to Technical Information (Unsatisfactory Feature Reps – Publications) (on-aircraft).
 - (3) The DQAO may delegate Government Quality Assurance to an overseas Government Quality Assurance Representative in accordance with STANAG 4107 Edn 9.
 - (4) For Parts designed to Federal Aviation Requirements (FAR), the US QAA may verify compliance with the Standards of Workmanship Inspection and Testing – The Contractor and Sub-Contractor shall use procedures prescribed under the appropriate FAR. The Authority reserves the right to reject the items if considered necessary after delivery. Any deliverable items will be accompanied by the Certificate of Conformity and may be countersigned by the US QAA Representative when required by the DQAO.
 - (5) Where GQA is performed against the contract it will be in accordance with AQAP 2070 Edition B Version 3.

20.12 Military Aviation Authority (MAA) Regulatory Publications

- a. The Contractor shall comply with the following MAA Regulatory Publications (MRP) issued by the Military Aviation Authority (the regulator):
 - (1) Overarching documents:
 - MAA01: MAA Regulatory Policy
 - MAA02: MAA Master Glossary
 - MAA03: MAA Regulatory Processes
 - (2) Regulatory Articles (RA):

- b. The Contractor shall comply with the Regulations set out in the above RA by following:
 - (1) The acceptable means of compliance (AMC) prescribed therein;
 - (2) Where there is more than one AMC, an AMC or AMCs agreed by the Contractor with the Regulator; or
 - (3) Other alternative means as may be agreed by the Contractor with the Regulator.
- c. Complying with the MRP does not reduce or limit any statutory or legal obligation of the Contractor.
- d. In addition to the above, the Contractor shall comply with the following Regulations:-
 - JSP 317 Defence Fuels Policy,
 - Organisation & Safety Regulations
 - MAP-01 Chap 11-11 Fuels, Lubricants and Associated Products (FLAP) and Gases

21 The processes that apply to this Contract are:

21.1 Ordering Process

- a. The Authority's Logistics Desk Officer shall generate a Requisition on the CP&F System for the Demand Order requirement and ensure that it is fully approved within the Authority's Project Team.
- b. The Authority's Commercial Desk Officer shall raise and issue a Purchase Order (PO) on CP&F which shall represent the Demand Order and listing the itemised Contractor Deliverables required. The Authority's Commercial Desk Officer shall advise both the Contractor and the Authority's Logistics Desk Officer of the relevant PO number. (Note: the Authority's Commercial Desk Officer to ensure that the PO is referenced to associated Blanket Purchase Agreement (BPA) number on CP&F; this is to ensure that Financial Sanction on the Contract is not exceeded).
- c. The Contractor fulfils the PO requirement and then inputs an invoice on CP&F for the contracted price(s) and

provides the Authority's Logistics Desk Officer with a DEFFORM 129J – Electronic Business Delivery Form (see template at Schedule 1 to Contract) as extracted by the Contractor from the Exostar System.

d. On receipt of the DEFFORM 129J, the Authority's Logistics Desk Officer confirms completion of the relevant PO requirement via the internal stores system and then arranges for the receipting of PO on CP&F.

e. If the Order, Invoice and Receipt value(s) match on CP&F then payment will be made to the Contractor electronically via the Authority's Bill Paying Authority at Liverpool.