



Andrew Johnson
Procurement Manager
Inventory & Repair Management
Babcock DSG Ltd
Defence & Security
Babcock International Ltd
Building B15
MOD Donnington
Telford TF2 8JT

Tel: 01952 673835
Email: Andrew.Johnson@dsg.mod.uk

Eurosigns (UK) Ltd
IRS Ltd
Millstream Penthouse System Ltd
RBLI
Signplus Ltd
TMP Ltd

Your Reference:

Our Reference:
LSBU15/0015

Date: 25/06/2015

Dear Sirs,

Invitation To Tender Reference No. LSBU15/0015

1. You are invited to tender for in competition for LSBU15/0015 in accordance with the attached documentation.
2. The requirement is for the Supply of Route Markings.
3. The anticipated date for the contract award decision is 21/08/2015, please note that this is an indicative date and may change.
4. You must submit your Tender to arrive no later than 05/08/2015 You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority.

Yours sincerely

Andrew Johnson
Procurement Manager
Babcock DSG acting as the Authority's agent

List of Suppliers Invited to Submit a Tender for ITT No. LSBU15/0015

Supplier Name	Supplier Address and Phone No	Supplier Point of Contact
TMP Ltd	Unit 7 Gatwick Distribution Point Church Road Crawley West Sussex RH11 0PJ United Kingdom 08456808066	Rachel rachel@traffic-products.co.uk
Eurosigns (UK) LTD	Winterstoke Road Weston-super-Mare North Somerset BS24 9BQ United Kingdom 01934421400	Jon Jenkins jon.jenkins@eurosignsgb.co.uk
RBLI	Royal British Legion Village Hall Road, Aylesford Kent ME20 7NL United Kingdom 01622795921	Andrew Slater andrew.slater@rbli.co.uk
IRS Limited	59 Turbine Way Ecotech Business Park Swaffham PE37 7XD United Kingdom 01760721399	Janet Eves signs@irs.uk.com
Millstream Penthouse Systems Ltd	190-192 Beverley Trading Estate, Morden Surrey SM4 4LU United Kingdom 02083378008	Nick Clements nick.clements@millstream-ltd.co.uk
Signplus Ltd	Bristol House 15 Ridge Way Dunfermline Fife KY11 9JH United Kingdom 01383825100	Leon Gow mod@signplus.co.uk

Invitation To Tender
for
LSBU15/0015
The Supply of Route Markings

Contents

This invitation consists of the following documentation:

- DEFFORM 47 – Invitation To Tender LSBU15/0015. The DEFFORM 47 sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
 - Section A – Introduction Page 5
 - Definitions
 - Purpose
 - ITT Documentation and ITT Material
 - Tender Expenses
 - Material Change of Control from Supplier Selection
 - Contract Conditions
 - Consultation with Credit Reference Agencies
 - Other Information
 - Section B – Key Activities Page 7
 - Section C – Instructions on Preparing Tenders Page 8
 - Tenders for Selected Contractor Deliverables
 - Construction of Tenders
 - Validity
 - Variant Bids
 - Section D – Tender Evaluation Page 9
 - Section E – Instructions on Submitting Tenders Page 10
 - Submission of your Tender
 - Samples
 - Section F – Conditions of Tendering Page 11
 - Conforming to the Law
 - Bid Rigging and Other Illegal Practices
 - Conflicts of Interest
 - Government Furnished Assets
 - Standstill Period
 - Publicity Announcement
 - Sensitive Information
 - Remedies for Breach of Contract
 - Reportable Requirements
 - Conditions of Tendering Specific to this Requirement
 - DEFFORM 47 Annex A – Tender Submission Document (Offer) Page A1
 - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
- Schedule of Requirements - Schedule 2, Annex A
- Statement of Requirement – is attached at Annex B to this Defform 47
- Contract Conditions
- DEFFORM 111 – Appendix to Contract - Addresses and Other Information
- Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)
- DEFFORM 28 – Tender Return Label
- DEFFORM 30 – The Electronic Transactions Agreement (where applicable)

Section A – Introduction

Definitions

- A1. This requirement is issued on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"). In this Agreement, the Authority is acting as part of the Crown and Babcock DSG will be conducting procurement and contract management activity as the Authority's agent.
- A2. "You / Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, which has been invited to submit a response to this Invitation to Tender.
- A3. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.
- A4. A "Tender" is the offer that you are making to the Authority.
- A5. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements if specified) which the contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.
- A6. "Schedule of Requirements" Schedule 2 in Standardised Contracting Template 2 (SC2) means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.
- A7. The "Statement of Requirement" is attached at Annex B to this Defform 47.
- A8. "Conditions of Tendering" means the conditions set out in the DEFFORM 47 that govern the competition.
- A9. "Contract Conditions" means the attached conditions that will govern any resultant contract.
- A10. A "Third Party" is any person who is not an employee of the Tenderer as defined at A2.

Purpose

- A11. The purpose of this ITT is to invite you to propose a solution / best price to our requirement. This documentation explains and sets out the:
- a. tender process and timetable for the next stages of the procurement;
 - b. instructions and conditions that govern this competition;
 - c. information you must include in your Tender and the required format;
 - d. administrative arrangements for the receipt and evaluation of Tenders; and
 - e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.
- A12. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.
- A13. This ITT has been issued to all potential Tenderers chosen during the supplier selection stage, listed on page 2 of this DEFFORM 47.
- A14. The requirement was advertised by the Authority in the OJEU Ref 2015/S 026-042992 dated 06 February 2015 reference to the requirement for the Supply of Route Markings following the Restricted procedure, under the Public Contracts Regulations 2006

ITT Documentation and ITT Material

- A15. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of

responding to this ITT. ITT Material means any other material (including patterns and samples), equipment or software issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Documentation, ITT Material and any intellectual property rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A15.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- e. accept that any further disclosure of ITT Documentation, or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
- f. immediately destroy all ITT documentation, ITT Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- g. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A16. Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A15 above.

Tender Expenses

A17. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

Material Change of Control from Supplier Selection

A18. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process. This may affect your right to stay in the competition.

Contract Conditions

A19. Standardised Contracting (SC2) conditions are attached. These conditions are non-negotiable.

Consultation with Credit Reference Agencies

A20. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a contract with you.

Section B – Key Activities

The key dates for this procurement are currently anticipated to be as follows:

Stage	Date and Time	Initiated By	Submit to:
Final date for Clarification Questions / Requests for additional information	22/07/2015	Tenderers	Samual Thangaraj
Final Date for Requests for Extension ¹	22/07/2015	Tenderers	Samual Thangaraj
The Authority issues Answers and Clarifications	24/07/2015	The Authority	All Tenderers ²
Tender Return	05/08/2015 14:00	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	12/08/2015	The Authority	N/A
Reverse Auction	W/C 17/08/2015	The Authority	N/A
Notice of Contract Award (Initiating Standstill Period and bidders debriefs)	21/08/2015	The Authority	All Tenderers
Entry into Contract	01/09/2015	The Authority	All Tenderers

Notes

1. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.
2. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other bidders. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date.

Section C - Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

C1. You must Tender for all the Contractor Deliverables listed in the attached Schedule of Requirements. The Authority reserves the right to reject your Tender where you have not tendered for all of the Contractor Deliverables

Construction of Tenders

C2. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP. Prices must be a Firm Price for 2 years, with the option year to be negotiated at the time.

C3. To assist the Authority's evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).

Validity

C4. In accordance with F3 your Tender must be valid / open for acceptance for ninety (90) calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

Variant Bids

C5. You may only submit a variant bid where the Contract Notice states that variant bids will be considered (or where the requirement is exempt from the EU Regulations). A variant bid is a Tender that offers an alternative approach to, or method of, meeting the Authority's requirements as set out in the ITT Documentation. The Authority will give full and careful consideration to any permitted variant bids received. Any variant bid should, as far as possible, meet the attached Conditions of Tendering and Contract Conditions.

C6. Where variant bids are permitted, and you submit a variant bid, you are required to submit two Tenders, one against the Statement of Requirement and one variant bid. The standard Tender must meet the 'minimum' tender evaluation criteria as set out in Section D (Tender Evaluation), and must be submitted in accordance with the Conditions of Tendering. Variant bids will be evaluated in accordance with the tender evaluation criteria as set out in Section D (Tender Evaluation) and must be submitted in accordance with the Conditions of Tendering.

C7. Any Tender made subject to additional or alternative Contract Conditions alone is not a variant bid. Where the tender evaluation has a pass / fail for the Contract Conditions the Authority may reject the Tender on the grounds of such additional or alternative Contract Conditions.

Section D – Tender Evaluation

This section details how your Tender will be evaluated, the tools used to evaluate the Tender and the evaluation criteria.

The Tender Evaluation will be on the basis of: **Lowest Price.**

It is the Authority's intention to award the Contract to the Tenderer offering the lowest total cost technically compliant proposal in terms of both price and lead-time .

The total cost of each bid shall be defined as the total cost of supplying the estimated quantities on Annex A to Schedule 2 – Schedule of Requirements over the 2 year period, plus the associated Lead Time Quantity

The Evaluation Quantity is an indication of the Authority's anticipated requirements over a two year period and is provided for evaluation purposes only and on a strictly without commitment basis.

The Lead Time Quantity is defined as the additional quantity required to meet the demand during the period between order placement and completion of delivery, and is calculated as follows:

[Forecast of Quarterly Demand (FQD) x Lead Time (in months)] / 3 (rounded up to the nearest whole number).

For the purposes of this evaluation, the FQD to be used for each line item is included at column F in Annex A to Schedule 2 – Schedule of Requirements.

The total Lead Time Quantity shall be added to the estimated quantities of each line item and multiplied by the firm price offered on the Annex A to Schedule 2 – Schedule of Requirements to determine the total cost of each Tenderer's bid.

The Authority does not wish to receive a Minimum Order Quantity (MOQ) against any line item. If, by exception, the Tenderer deems it necessary to impose an MOQ then he must provide adequate justification with his bid. Should a quoted MOQ exceed the sum of the estimated quantities and Lead Time Quantity then the MOQ shall be used in its place to calculate the total cost.

Only Commercially and technically complaint bids will be taken through to the reverse action

Section E – Instructions on Submitting Tenders

Submission of your Tender

E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this DEFFORM 47. You must provide 2 identical copies of the Proposal, 1 signed hard copy and 1 electronic copy, submitted on a CD. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.

E2. Please ensure you include the electronic copy of the priced Tender with the associated paper copy/ies only. You must label the CD containing electronic copy of the Tender with "Includes Prices". The electronic copy of the Tender must be compatible with Microsoft Office Word 2003 and other MS Office 2003 applications. If you submit files that are password protected or encrypted any information on CDs containing prices you must supply the password so that the Authority can undertake a pricing evaluation.

E3. You must complete and include DEFFORM 47 Annex A (Offer) (excluding Appendix 1) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.

E4. You must include the original signed DEFFORM 47 Annex A (Offer) with one paper copy of your priced Tender.

E5. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.

E6. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.

E7. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.

E8. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.

Section F – Conditions of Tendering

F1. The issue of ITT Documentation is not a commitment by the Authority to place a contract as a result of this competition or at a later stage. Any expenditure, work or effort undertaken prior to an offer of contract and acceptance of that, is a matter solely for your commercial judgement. The Authority reserves the right to:

- a. seek clarification or additional documents in respect of a Tenderer's submission;
- b. disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT;
- c. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic Pre-Qualification Questionnaire (PQQ) or the tender process;
- d. re-assess your suitability to remain in the competition, for example where there is a material change of control from supplier selection;
- e. withdraw this ITT at any time, or to re-invite Tenders on the same or any alternative basis;
- f. choose not to award any contract as a result of the current procurement process;
- g. award a contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities; and / or;
- h. ask for a price breakdown where the Tender price is low.

F2. The contract will be entered into when the Authority sends written notification of its entry into the contract. Written notification will be issued, to the address you provide, on or before the expiration of the period specified in paragraph C4 and subject to paragraph F3.

F3. It is a Condition of Tendering that the winning Tenderer holds their Tender open for acceptance for the period stated in C4. This period starts on the day the Authority announces its decision to award the contract to the winning Tenderer in accordance with the Tender. In the event that legal proceedings challenging the award of the contract are instituted, prior to entry into contract, it is a condition of this ITT that you hold your Tender open for acceptance during this period, and up to fourteen (14) days after the result of the legal proceedings. In the event of such legal challenge, the Authority agrees to use all reasonable measures to accelerate proceedings.

Conforming to the Law

F4. You must comply with the UK Competition Act 1998, the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.

F5. Your attention is drawn in particular to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation then your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

Bid Rigging and Other Illegal Practices

F6. You must report any bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline
0800-161 3665 (UK) or
+44 1371 85 4881 (Overseas)

Conflicts of Interest

F7. You must notify the Authority immediately of any Conflicts of Interest (COI) that have arisen or that arise at any point prior to contract award decision.

F8. Where there is an existing or potential Conflict of Interest (COI) you must include a proposed Compliance Regime in your Tender. As a minimum this must include:

- a. manner of operation and management;
- b. roles and responsibilities;
- c. standards for integrity and fair dealing;
- d. levels of access to and protection of competitors sensitive information and Government Furnished Information;
- e. confidentiality / non-disclosure agreements (e.g. DEFFORM 702);
- f. the Authority's rights of audit; and
- g. physical and managerial separation.

Should your Tender be accepted your proposed Compliance Regime will become part of the Contract Conditions and shall be legally binding.

Government Furnished Assets

F9. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-99. If unsuccessful in this competition, you must seek disposal instructions for that GFA from the named Commercial Officer.

Standstill Period

F10. The Authority is obliged under certain circumstances to allow a space of ten (10) calendar days between the date of dispatch of its notice to Tenderers before entering into a contract, known as the standstill period. This period is to give unsuccessful Tenderers an opportunity to make a legal challenge before the contract is entered into if there has been, or it is alleged that there has been, a breach of the Regulations. The standstill period ends at midnight at the end of the 10th day after the date the DEFFORM 158 is sent. Where this is not a working day, it extends to midnight of the next working day.

Publicity Announcement

F11. The Authority will publish notification of the contract and may publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition between suppliers. You should complete and return DEFFORM 539A as explained in the DEFFORM 47 Annex A and associated Appendix 1.

F12. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.

F13. Under no circumstances should you confirm to any Third Party the Authority's acceptance of an offer of contract prior to either informing the Authority of your acceptance or the Authority's announcement of the award of contract, whichever occurs first.

Sensitive Information

F14. All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.

F15. For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A and consent to these terms as part of the competition process. This allows the MOD to share information with other Government departments while complying with our obligations to maintain confidentiality.

Remedies for Breach of Contract

F16. If using Standardised Contracting conditions you should be aware of the contractual remedies set out in clause F.6.a of SC2 which may apply in the event of a breach of contract by the contractor. Damages for breach of contract are not limited under the contract. However, you should also note [under clause F6.d that in exercising its rights and remedies under the contract the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If you are unsure about the potential liability under the contract, you should seek advice from the named Commercial Officer.

Reportable Requirements

F17. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.

F18. This is not a test of your answer but failure to complete this part of the Annex makes your Tender non-compliant.

Conditions of Tendering Specific to this Requirement

F19. Submission of Tender Response.

The Tenderer shall submit one signed hard copy of the bid plus a CD containing a soft copy. The Tenderer shall, as a minimum, provide the following information:

- a. Completed and signed DEFFORM 47 (Offer) sheet
- b. A Completed, signed copy of DEFFORM 539A - Tenderer's Commercially Sensitive Information Form.
- c. Annex A to Schedule 2 – Schedule of Requirements – Firm pricing offer for 2 Years for each line item, making special note of the following:
 - i. The Tenderer shall offer appropriate price breaks (up to a maximum of 6) that take account of the Evaluation Quantity identified at columns J.
 - ii. In conjunction with the price breaks offered, the Tenderer shall confirm, at columns K, the Evaluation Price, which shall be the price applicable to the Evaluation Quantity at column J. Where the Evaluation Price does not match the price breaks offered, the Authority reserves the right to consider the offer for that line item as non-compliant.
 - iii. In providing price breaks for each line item, Tenderers shall ensure that the prices represent a consistent offer across the range of quantity bands where each price is commensurate with the quantity band it relates to and the other prices offered for higher and lower quantity bands.
 - iv. Where the Authority reasonably considers that an offer for a particular line item has been skewed to supply an artificially low price for the Evaluation Quantity then the Authority reserves the right to consider the offer for that line item as non-compliant.
- d. Annex A to Schedule 2 – Schedule of Requirements – Lead time for each line item, at column Y is to be provided in working days.
- e. Tenderers shall submit a draft Quality Plan with their Tender in accordance with AQAP2105.

- f. Tenderers are required to confirm unqualified acceptance of the Terms and Conditions of the Contract by completing the Compliance Matrix

F20. Key Performance Indicators.

The Contract shall contain a set of Key Performance Indicators, as detailed at General Contract Provision K1, to measure the Contractor's performance in areas such as delivery and quality. The Tenderer is invited to put forward additional KPIs to measure its performance, plus that of the Authority, in specific areas.

F21. Shelf Life

It shall be a requirement of the Contract that, where shelf life is a consideration, the Contractor shall declare to this effect and provide details against each Contractor Deliverable to be recorded at Annex A to Schedule 2.

F22. Government Security Classifications.

As of the 2nd April 2014, the new Government Security Classifications Policy (GSC) was introduced. A key aspect of this policy is the reduction in the number of security classifications used. This Tender and any subsequent contract that may be awarded to you as a result, is subject to protection under GSC. You are therefore encouraged to make yourself aware of the changes through the [Gov.uk GSC website](http://Gov.uk/GSC/website).

The Authority hereby reserves the right to amend any security related term or condition of the draft contract accompanying this ITT to reflect any changes introduced by national law or government policy. Where this ITT is accompanied by any instructions on safeguarding classified information, e.g. a security aspects letter, the Authority reserves the right to amend the terms of these instructions, as a result of any changes in national law or government policy, whether in respect of the applicable protective marking scheme, specific protective markings given, the aspects to which any protective marking applies, or otherwise. This may relate to the instructions on safeguarding classified information as they apply to the tender process and, or, any contract awarded to you as a result of this tender process."

F23. Sustainable Development.

The Authority is very committed to achieving sustainable development goals through educating the supply chain, developing performance measures and sharing best practice. This is not a condition to working with the Authority now or in the future, nor part of the contract. It is however a commitment on our part to encourage and support sustainable development and we are committed to working with you to this end. The Authority very much hopes that you share this commitment and we will discuss sustainable development further with the successful Tenderer during the performance of any resultant contract.

F24. Military Level Packaging

Military level Packaging shall be the responsibility of the Contractor. The Tenderer shall ensure that their bids reflect the full cost of any items that require packaging to a military level standard.

Where the Tenderer intends to use a MPAS accredited specialist packaging Contractor to undertake military level packaging, the Tenderer shall submit with his bid details of the Contractor, including full title, address and contact details as a minimum.

F25. Quality Plan and Inspection

In accordance with Schedule 3 and Clause B1.a.(2), Tenderers are required to submit a Draft Quality Plan with their Tender response detailing how all Contract related quality requirements shall be fulfilled. The Draft Quality Plan must be produced in accordance with AQAP 2105 Edition

2, a copy of which is available upon request. Upon receipt of Tender responses, a copy of the Tenderer's Draft Quality Plan shall be passed to the Operational (OIP) Project Team Quality Manager for scrutiny. A template is included at Annex B to Schedule 3.

Tenderer's shall allow the Authority access to their premises for the purpose of undertaking Quality Audits and Inspections during the tender period and post contract award. The Tenderer shall indicate their willingness to accommodate this in the form of a statement in their Tender return. The Authority shall carry out an inspection of each of the Tenderer's proposed facilities in line with the Draft Quality Plan.

F26. Reverse Auction

1. The Authority intends to conduct a Reverse Auction for this requirement. The Reverse Auction is a process conducted via the Internet in which those Tenderers who have submitted a compliant response to the Invitation to Tender (ITT) are invited in electronic competition to offer a lower price than that provided in the tender return. The purpose of conducting a Reverse Auction is so that the Authority shall benefit from improved competition while Tenderers shall benefit from improved knowledge about market pricing. Acceptance by the Authority of an electronic offer shall be subject to the terms and conditions of the ITT.

2. In accordance with paragraph F1 of the DEFFORM 47 the Authority reserves the right to request an explanation of the costs or price proposed.

3. To participate in the Reverse Auction, Tenderers must have access to the Internet and one of the following browsers:

- Internet Explorer 9 and above,
- Mozilla Firefox 31+
- Google Chrome
- Apple Safari 6.14

In addition, for full functionality of the Auction Monitor, bidders must install;

- Java version 1.7+

4. Acting on behalf of the Authority, the external Auction Service Provider shall notify the date and scheduled start time of the Reverse Auction to compliant Tenderers. The external Auction Service Provider will manage the operational aspects of the Reverse Auction event on behalf of the Authority. The Auction Service Provider will provide the Tenderer with the Rules of Participation, a username and password that allows secure access to the relevant web pages, including the training activity and individual Reverse Auction event.

5. Training shall be provided by the Auction Service Provider, usually 24 hours before the event is scheduled to take place. The training exercise is aimed at ensuring that participating Tenderers are adequately equipped in terms of computer software, hardware and Internet connectivity. It will also provide the opportunity to confirm that starting prices are accurate as actual pricing will be used during the training. The identity of the Tenderers shall not be disclosed at any point.

6. Compliant Tenderers shall be notified of the starting prices by the Auction Service Provider prior to the Reverse Auction scheduled start time, but shall not be able to make any revised bid until the start of the Reverse Auction.

The Auction Service Provider shall use the lowest total tendered price, per Lot, submitted by a compliant Tenderer on DEFFORM 47 Annex A, as the starting price in the Reverse Auction. If the tender has been evaluated using Most Economically Advantageous Tender evaluation criteria the total price of the highest scored tender, per Lot, rather than the lowest price, will be ranked first. If the tender has been evaluated where nominal price discounts have been awarded for technical elements of the tendered solution, the total lowest weighted price, per Lot, rather than the lowest price, will be ranked first. If the requirement is divided into Lots each Lot will be auctioned concurrently.

7. During the Auction each Tenderer shall be able to see their own tendered price in comparison to the lowest total tendered price (or highest scored total price / lowest weighted total price) per Lot and their individual ranking. Any change in the total price, or a Tenderers individual ranking, shall be reflected on the screen shortly after it has been submitted. A new total price submitted by a Tenderer that equals an existing total price shall be ranked behind the existing bid. No minimum or maximum bid decrement shall be applied.

8. The Reverse Auction will have a standard duration of thirty minutes. The Auction Service Provider's website shall indicate the time remaining to the end of the Auction. Any bids submitted in the final three minutes of the Auction shall automatically extend the Auction to ensure that there is always at least three minutes remaining to allow Tenderers to review their position and enter a lower bid. The Auction will end only when no more bids are received during the three minute extensions

9. Following completion of the Reverse Auction, all Tenderers are required to update the item pricing on the pricing sheet provided, per Lot, by the Auction Service Provider. No item price should exceed the item price initially offered by the Tenderer in their tender return. The total price of the completed pricing sheet must match the lowest total price offered by the Tenderer during the Reverse Auction. Each Tenderer should return the completed pricing sheet to the Auction Service Provider within 48 hours of the Reverse Auction closure.

10. Tenderers must note that bids made during the Reverse Auction are provided on the understanding that the price offer shall remain open for acceptance by the Authority. The Authority reserves the right not to award a Contract based on the outcome of the tender process or the Reverse Auction.

Ministry of Defence

Tender Ref No. LSBU15/0015

Tender Submission Document (Offer)

To the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter called "the Authority")

The undersigned Tenderer, having read the ITT Documentation, offers to supply the Contractor Deliverables at the stated price(s), in accordance with any referenced drawings and / or specifications, subject to the Conditions of Tendering. It is agreed that only the Contract Conditions or any amendments issued by the Authority shall apply.

Applicable Law				
I agree that any contract resulting from this competition shall be subject to English Law *Where 'No' is selected, Scots Law will apply.				Yes / No*
Total Value of Tender (excluding VAT)				
£				
WORDS				
UK Value Added Tax				
If registered for Value Added Tax purposes, please insert:				
a. Registration No				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
Location of work (town / city) where contract will be performed by Prime:				
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)				
Tier 1 Sub-contractor Company Name	Town / city to be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration	
Is the offer subject to the Authority contracting for all the Contractor Deliverables?			Yes* / No	
Is the offer made subject to a Minimum Order Quantity?			Yes* / No	
Are the Contractor Deliverables subject to Registered Designs or Patents?			Yes* / No	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions?			Yes* / No	
Are the Contractor Deliverables subject to Overseas Expenditure?			Yes* / No	
Have you complied with all regulations relating to the operation of the collection of custom import duties?			Yes / No	
Have you completed Form 1686 for sub-contracts?			Yes / No	
Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?			Yes / No	
Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?			Yes / No	

If you have not already signed a corporate level DEFFORM 30 have you attached one?	Yes / No
Have circumstances changed since Supplier Selection Stage? If so have you attached a revised Statement Relating to Good Standing?	Yes* / No
Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No
Do the Contractor Deliverables contain hazardous items, materials or substances?	Yes* / No
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000? http://ozone.unep.org/new_site/en/montreal_protocol.php	Yes* / No
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No
Have you attached The Bank / Parent Company Guarantee?	Yes* / No / Not Required
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	Yes / No / Not Required
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	
Tenderer's Declaration of Compliance with Competition Law	
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <ul style="list-style-type: none"> a. the offered price has not been divulged to any Third Party, b. no arrangement has been made with any Third Party that they should refrain from tendering, c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion, d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and e. no arrangement has been made with any Third Party otherwise to limit genuine competition. <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.</p>	
Dated this..... day of Year	
Signature: (Must be original)	In the capacity of (State official position e.g. Director, Manager, Secretary etc.)
Name: (in BLOCK CAPITALS) duly authorised to sign this Tender for and on behalf of: (Tenderer's Name)	Postal Address: Telephone No: Registered Company Number:

Information on Mandatory Declarations

Part Tender

1. Under Condition of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority contracting for all the Contractor Deliverables select 'Yes' and provide further details in your Tender.

Minimum Order Quantities

2. Where your offer is subject to minimum order quantities select 'Yes' and provide further details in your Tender.

Notification of Inventions etc.

3. Where the Contractor Deliverables are subject to any Registered Intellectual Property Rights select 'Yes'.

4. You must clearly state in your Tender any Contractor Deliverable to be produced under any resultant contract that is, or is likely to be, the subject of a Patent, a Registered Design right or an application for either, or an unregistered design right, owned by either yourself or a Third Party. This includes anything of this nature affecting the performance of any resultant contract or subsequent use of any Contractor Deliverable by the Authority. You must specifically draw attention to:

a. any Patent or Registered Design (or application for either) or unregistered design right you own or control which is or appears to be relevant to the Contractor Deliverables, the use of which by or on behalf of the Authority may give rise to a claim under Sections 55 or 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949, or Section 240 of the Copyright, Designs and Patents Act 1988;

b. any allegation made against you, whether by claim or otherwise, of an infringement of an intellectual property right (whether a Patent, Registered Design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;

c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;

d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.

5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

Notification of Foreign Export Control Restrictions

7. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:

a. Whether all or part of any Contractor Deliverables are or will be subject to:

(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

b. If requested, a summary of every existing, expected or known licence and restriction referred to in paragraph 7.a. This includes any related obligation or restriction and the extent they place an obligation or restriction on the Authority, including:

- (1) the exporting nation and the export licence number, where known;
- (2) the Contractor Deliverables affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access by Third Parties, or by individuals based on their nationality, to the Contractor Deliverables; and
- (6) any specific restrictions on re-transfer or re-export to Third Parties of the Contractor Deliverables or anything delivered or used in the performance or fulfilment of them.

c. If requested, you must provide an outline of your mitigation plan to manage performance risks on any resultant contract based on paragraph 7.a.

8. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraphs 7.a and 7.b. If you are unable to obtain adequate information, you must state this in your Tender when responding to paragraph 7.a and 7.b.

9. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately.

10. If you have previously provided information under paragraph 7 you can provide details of the previous notification and confirm the validity.

11. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.

12. It is the Winning Tenderer(s) responsibility to ensure they comply with any restrictions stated in paragraph 7 during the life of the contract. This includes any restrictions the Authority has explicitly stated / clarified in any ITT documentation.

13. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 7.

Overseas Expenditure

14. You must provide details in your Tender of any expenditure outside the UK, including:

- a. country in which sub-contract is placed / to be placed;
- b. name, division and full postal address of sub-contractor;
- c. value of sub-contract; and
- d. date sub-contract placed / to be placed.

15. Should you propose the supply of Articles of US origin the export of which from the USA are subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details in your Tender. This will allow the Authority to make a decision whether the export can or cannot be made under the auspices of the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

Import Duty

16. Council Regulation (EC) No 150/2003 suspends Custom duties on a range of military weapons and equipment. For the purposes of this competition for any Contractor Deliverables eligible for suspension of import duties and not yet imported into the European Union, you must provide prices excluding **and** including Import Duty.

17. Where the Contractor Deliverables are exempt under Council Regulation (EC) No. 150/2003, the Authority will issue a certificate for those Contractor Deliverables eligible for suspension of import duties.

18. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the collection of import duties. This includes but is not limited to obtaining Her Majesty's Revenue and Customs (HMRC) end use relief authorisation.

Sub-contracts Form 1686

19. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of either Reportable OFFICIAL or OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the Security Policy Framework – Contractual Process chapter. You can access a word version of Form 1686 on GOV.UK at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322603/Contractual_Process_-_Appendix_5_form.doc.

Small and Medium Enterprises

20. The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) initiative; its aspiration is that 25% of spend, direct and through the supply chain, should go to SMEs by 2015. The MOD uses the EU definition of an SME.

21. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the Prompt Payment Code at: <http://www.promptpaymentcode.org.uk>.

22. Suppliers are also encouraged to work with the Authority to support the wider SME initiative. The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative. <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively/supporting-pages/making-sure-government-gets-full-value-from-small-and-medium-sized-enterprises>.

23. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:

BIP Solutions Ltd
Web address: www.contracts.mod.uk
Tel No: 0845 270 7099

Transparency, Freedom of Information and Environmental Information Regulations

24. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>) and the information contained within and the information contained within DEFCON 539 or SC2 Conditions of Contract Clause A14.

25. Before publishing the contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").

26. You should complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A) explaining which parts of your Tender you consider are commercially sensitive. This includes providing a named individual who may be contacted with regard to FOIA and EIR.

27. You should note that, while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

Electronic Purchasing

28. It is the intention to operate electronic trading. Babcock DSG is developing an electronic payment system; all potential suppliers will be notified of the new system and the migration plan in due course. Where Suppliers are already established on P2P, trading by this method will continue until such a time as the Babcock DSG electronic payment system is introduced. Where a Supplier is not already established on P2P, Babcock DSG will trade via MOD Form 640's until a new electronic payment system has been established.

Change of Circumstances

29. Where circumstances have changed with regard to a Statement Relating to Good Standing or you have not previously submitted a Statement Relating to Good Standing select 'Yes' and submit a Statement Relating to Good Standing with your Tender.

Asbestos, Hazardous Items and Depletion of the Ozone Layer

30. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' and provide further details in your Tender.

Reservist and other Supplier Support to the Armed Forces

31. The 2010 Strategic Defence and Security Review set out what our Armed Forces will look like and outlined the role of the Reserve Forces within that Future Force. Reserves will have a greater role, providing both a larger proportion of the force and Defence capabilities in certain specialist areas that are not practical or cost effective to maintain full time.

32. The MOD wishes to have a more sustained and enduring relationship with suppliers, on Reservist and other military personnel objectives, based on mutual benefit. The personnel objectives include:

- a. Employment of service leavers
- b. Employment of wounded, injured or sick veterans
- c. Employment of the partners of service personnel
- d. Helping local cadet units
- e. Support to Reservist employees
- f. Encouragement of Reserve service

33. Of particular interest to Defence is the need to have more Reservists employed by reserves supportive employers as described in Chapter 4 of the White Paper, 'Reserves in the Future Force 2020; Valuable and Valued' available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210470/Cm8655-web_FINAL.pdf

34. The Authority therefore encourages all Tenderers, and their suppliers, to:

- a. consider whether they are able to support these objectives; and, if they are
- b. sign the Corporate Covenant, declaring their support for the Armed Forces community.

35. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at [The corporate covenant - Detailed guidance - GOV.UK](#).

36. Specific guidance on how you can support the Reserve Forces, what your support means in practice, and what the potential benefits are for you can be found at: www.sabre.mod.uk.

37. Please provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included in the websites.

Email address: covenant-mailbox@mod.uk
Address: Armed Forces Covenant Team
Zone D, 6th Floor, Ministry of Defence,
Main Building, Whitehall, London, SW1A 2HB

38. Where you decide to contribute to meeting the personnel objectives above, you should also report the outcomes of such contributions to the above address so they can be recorded and acknowledged.

39. Paragraphs 31 – 38 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support and we are committed to working with you to this end.

Military Aviation Authority (MAA) Requirements

40. There are no MAA Requirements.

Bank or Parent Company Guarantee

41. A Bank or Parent Company Guarantee is not required.

Statement of Requirement

The Authority is considering establishing an Enabling Contract (EC) for the Supply of Route Markings used by the British Army. The duration of the EC shall be firm for 2 years with the option to extend for a further year.

The Authority is seeking a single supplier to provide all items, All items must be supplied compliant to a specification which will be issued with this Invitation to Tender.

The Authority reserves the right to add items of a similar nature to the contract during its lifetime.

Any resulting contract shall contain a set of Key Performance Indicators to measure performance in areas such as delivery and quality and shall include remedies for poor performance.

The Authority shall award the Contract based upon best value for Defence in accordance with the process detailed at Section D of DEFFORM 47



**Ministry
of Defence**

Babcock DSG Procurement Team

Contract No: LSBU15/0015

For:

The Supply Of Route Markings

<p>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</p> <p>Team Name and address: DSG, Defence & Security, Babcock International Group, Building B15, Donnington, Telford, Shropshire, TF2 8JT</p> <p>E-mail Address: Andrew.Johnson@dsg.mod.uk Telephone Number: 01952 673835 Facsimile Number: 01952 673864</p>	<p>And</p> <p>Contractor Name and address:</p> <p>E-mail Address: Telephone Number: Facsimile Number:</p>
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A	GENERAL CONTRACT PROVISIONS	4
A1.	Interpretation	4
A2.	Amendments to Contract	4
A3.	Variations to Specification	4
A4.	Precedence	5
A5.	Severability	5
A6.	Assignment of Contract	5
A7.	Waiver	5
A8.	Third Party Rights	6
A9.	Governing Law	6
A10.	Entire Agreement	7
A11.	Disclosure of Information	7
A12.	Publicity and Communications with the Media	9
A13.	Protection of Personal Data	9
A14.	Transparency	9
A15.	Equality	9
A16.	Child Labour and Employment Law	9
A17.	Subcontracting	10
A18.	Change of Control of Contractor	11
A19.	Termination for Insolvency or Corrupt Gifts	11
A20.	Consequences of Termination	14
A21.	Dispute Resolution	14
A22.	Termination for Convenience	14
A23.	Contractor's Records	15
A24.	Duration of Contract	15
B	THE CONTRACTOR DELIVERABLES	15
B1.	Supply of Contractor Deliverables and Quality Assurance	15
B2.	Overseas Expenditure	15
B3.	Import Licence	16
B4.	Export Licence	16
B5.	Environmental Requirements	18
B6.	Marking of Contractor Deliverables	19
B7.	Packaging and Labelling (excluding Contractor Deliverables containing Munitions)	19
B8.	Supply of Hazardous Material or Substance in Contractor Deliverables	22
B9.	Timber and Wood-Derived Products	23
B10.	Certificate of Conformity	25
C	PRICE	25
C1.	Contract Price	25
D	INTELLECTUAL PROPERTY	26
D1.	Third Party Intellectual Property – Rights and Restrictions	26
E	FACILITIES AND ASSETS	29
E1.	Access to Contractor' Premises	29
F	DELIVERY AND BREACH OF CONTRACT	29
F1.	Delivery / Collection	29
F2.	Acceptance	30
F3.	Rejection	30
F4.	Diversion Orders	30
F5.	Self to Self Delivery	31
F6.	Authority's Remedies for Breach of Contract	31
G	PAYMENT AND RECEIPTS	32
G1.	Payment	32
G2.	Value Added Tax	33
G3.	Debt Factoring	34
H	CONTRACT ADMINISTRATION	34
H1.	Progress Monitoring, Meetings and Reports	34
H2.	Authority Representatives	34
H3.	Notices	35
J.	THE PROJECT SPECIFIC DEFCONS AND DEFCON SC VARIANTS THAT APPLY TO THIS CONTRACT ARE:	35
K.	THE SPECIAL CONDITIONS THAT APPLY TO THIS CONTRACT ARE:	36
L.	THE PROCESSES THAT APPLY TO THIS CONTRACT ARE:	38
	SCHEDULE 1 - DEFINITIONS OF CONTRACT	41
	SCHEDULE 2 - SCHEDULE OF REQUIREMENTS FOR CONTRACT NO:	1

SCHEDULE 3 - CONTRACT DATA SHEET FOR CONTRACT NO:	1
CONTRACTOR:	9
Annex A to Schedule 3	1
SCHEDULE 4 - CONTRACT CHANGE PROCESS PROCEDURE (I.A.W. CLAUSE A2.B) FOR CONTRACT NO: 1	1
SCHEDULE 5 - EXPORT LICENCE (I.A.W. CLAUSE A17.G) FOR CONTRACT NO:	1
SCHEDULE 6 - HAZARDOUS ARTICLES, MATERIALS OR SUBSTANCES SUPPLIED UNDER THE CONTRACT: DATA REQUIREMENTS	1
SCHEDULE 8 - ACCEPTANCE PROCEDURE (I.A.W. CONDITION F2) FOR CONTRACT NO:	1
SCHEDULE 9 - CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION FORM (I.A.W. CONDITION A14) FOR CONTRACT NO:	1
Schedule 1	Definitions of Contract
Schedule 2	Schedule of Requirements
Schedule 3	Contract Data Sheet Annex A to Schedule 3
Schedule 4	Contract Change Process Procedure (i.a.w. clause A2.b)
Schedule 5	Export Licence (i.a.w. clause A17.g)
Schedule 6	Hazardous Articles, Materials or Substances Supplied under the Contract: Data Requirements
Schedule 7	Timber and Wood-Derived Products Supplied under the Contract: Data Requirements
Schedule 8	Acceptance Procedure (i.a.w. condition F2)
Schedule 9	Contractor's Commercially Sensitive Information Form

MOD Conditions for the Supply of Goods and Associated Services: Contract No: LSBU15/0015

A General Contract Provisions

A1. Interpretation

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
 - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

A2. Amendments to Contract

- a. Except as provided in condition F4 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

A3. Variations to Specification

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

b. Any variations that cause a change to:

- (1) fit, form, function or characteristics of the Contractor Deliverables;
- (2) the cost;
- (3) Delivery Dates;
- (4) the period required for the production or completion; or
- (5) other work caused by the alteration,

shall be the subject to condition A2 (Amendments to Contract). Each amendment under condition A2 shall be classed as a formal change.

A4. Precedence

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

- (1) Sections A - H (and J - L, if section J - L are included) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
- (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause A4.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4.a above. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

A5. Severability

If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

- a. such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
- b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

A6. Assignment of Contract

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

A7. Waiver

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

A8. Third Party Rights

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in their own right and the Parties to the Contract declare that they have no intention to grant any such right.

A9. Governing Law

a. Subject to clause A9.d, the Contract shall be considered as a contract made in England and subject to English Law.

b. Subject to clause A9.d and A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Subject to clause A9.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.

d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause A9.a, A9.b and A9.c shall be amended to read:

"a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.

b. Subject to clause A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."

(2) Clause A21.b shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010."

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this clause A9 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

A10. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

A11. Disclosure of Information

- a. Subject to clauses A11.d, A11.e and A11.h each Party:
- (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A11.a and A11.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses A11.a and A11.b shall not apply to any Information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
 - (3) can show:
 - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

(b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;

(c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or

(d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.

f. The Authority may disclose the Information:

(1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

(2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

g. Before sharing any Information in accordance with sub-clause A11.f above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

- i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

A12. Publicity and Communications with the Media

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent or as otherwise required to comply with Legislation.

A13. Protection of Personal Data

In the performance of the Contract, both Parties shall comply with their obligations as a data controller, as defined in the Data Protection Act 1998.

A14. Transparency

- a. Subject to clause A14.b but notwithstanding condition A11 (Disclosure of Information), 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 A14.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, and any Information which has been acknowledged by the Authority at Schedule 9 – Contractor Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.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 condition A14 shall affect the Contractor's rights at law.

A15. Equality

- a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- b. Without prejudice to the generality of the obligation in clause A15.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation in the country where the Contract is being performed.
- c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.
- d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

A16. Child Labour and Employment Law

- a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- b. The Contractor agrees to use reasonable efforts to reflect this Condition in any

subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

A17. Subcontracting

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.
- b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.
- c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:
 - (1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and
 - (2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) calendar days from receipt of a valid invoice as defined by the subcontract requirements; and
 - (3) Condition A16 (Child Labour and Employment Law) of the Contract; and
 - (4) Condition B9 (Timber and Wood-Derived Products) of the Contract.
- d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience, in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days notice (or such other notice period as the Authority shall give under this Contract).
- e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/procurement>.
- f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by clause D1.a of condition D1 (Third Party Intellectual Property – Rights and Restrictions). On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with clause D1.g. Any such authorisation shall always be subject to clauses D1.j, D1.k and D1.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.
- g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in Schedule 5 to this Contract. Where it is not practicable to include the terms set out in Schedule 5, the Contractor shall report that fact and the circumstances to the Authority.

A18. Change of Control of Contractor

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 #2119, MOD Abbey Wood, South Bristol BS34 8JH, as soon as practicable if the Contractor will potentially undergo a material change of Control. The Contractor shall not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.

c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's Concerns to the Authority's satisfaction in accordance with clause A18.a or has failed to supply or withheld the Information required under clause A18.a.

d. If the Authority exercises its right to terminate in accordance with clause F6.a.(4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A18.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

A19. Termination for Insolvency or 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:

Insolvency:

a. where the Contractor is an individual:

(1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;

(4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty one (21) Business Days of service of the statutory demand on it;

(b) execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;

(c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or

(d) It is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985;

(7) or any analogous procedure or step is taken in any jurisdiction;

b. where the Contractor is a firm:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) any event listed in clause A19.a occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor; or

(4) any event listed in clause A19.c occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(5) an event listed in clause A19.e in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(6) any event listed in this clause A19.b occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;

(7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(b) it is unable to pay its debts in terms of section 221 of IA 86;

(11) or any analogous procedure or step is taken in any jurisdiction;

c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;

(3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

(7) any analogous procedure or step is taken in any jurisdiction;

d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

Corrupt Gifts:

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (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:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the

Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

(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 Contract 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 conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

g. In exercising its rights or remedies to terminate the Contract under clause A19 f. 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.

h. Where the Contract has been terminated under clause A19.f, 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.

A20. Consequences of Termination

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

A21. 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 A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b 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.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

A22. Termination for Convenience

a. The Authority shall have the right at any time to terminate the Contract in whole or in part

by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.

b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.

c. The Authority's total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

A23. Contractor's Records

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years after the expiry or earlier termination of the Contract.

A24. Duration of Contract

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

B The Contractor Deliverables

B1. Supply of Contractor Deliverables and Quality Assurance

a. The Contractor shall:

- (1) supply the Contractor Deliverables in accordance with the Specification; and
- (2) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet);

in providing the Contractor Deliverables.

b. The Contractor shall comply with all applicable Legislation.

c. The Contractor warrants that it has the full capacity and authority to enter into and to exercise its rights and perform its obligations under the Contract.

d. The Contractor warrants and represents to the Authority that it shall discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

e. To the extent that it is legally able to do so the Contractor undertakes that until the expiry date, or termination date if the Contract is terminated prior to the expiry date, it shall give the Authority Notice of any litigation, arbitration (in so far as it is permitted to do so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would materially affect the Contractor's ability to perform its obligations under the Contract.

B2. Overseas Expenditure

a. The Contractor shall report, in writing, to the Authority details of any direct Overseas expenditure valued over £1 million likely to be incurred in the execution of the Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

- (1) Contract No;
- (2) country in which subcontract placed/to be placed;
- (3) name, Division and full postal address of Subcontractor;
- (4) value of subcontract as applicable to main Contract;
- (5) date placed / to be placed.

b. If no Overseas orders valued over £1 million are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

c. For the purpose of clauses B2.a and B2.b Overseas expenditure comprises only those direct payments made by the Contractor to:

- (1) Overseas firms; and
- (2) UK firms, including UK branches or subsidiaries of Overseas firms,

for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

d. The Contractor shall submit any Information required by clause B2.a to the Authority's Representative (Commercial).

B3. Import Licence

If, in the performance of the Contract, the Contractor needs to import materiel into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

B4. Export Licence

a. The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Contractor Deliverable (including Information and software) to be Delivered under the Contract is or will be subject to:

- (1) a non-UK export licence, authorisation or exemption; or
- (2) any other related transfer control,

that imposes or will impose end use, end user, re-transfer, re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in condition D1.

b. If requested by the Authority, the Contractor shall give the Authority a summary of every existing or expected licence and restriction referred to in clause B4.a and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:

- (1) the exporting nation, including the export licence number (where known);
- (2) the Contractor Deliverables (including Information and software) affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Contractor Deliverables or to anything Delivered or used in the performance or fulfilment of the Contractor Deliverables; and

- (6) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Contractor Deliverables or of anything delivered or used in the performance or fulfilment of the Contractor Deliverable.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the Authority must comply.

c. When an export licence is required from a foreign government for the performance of the Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is the applicant for the licence:

- (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable to be Delivered under the Contract, the Contractor, unless otherwise agreed with the Authority, identifies in the licence application:

- (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and

- (b) the end use as: For the Purposes of HM Government;

- (2) include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the Ministry of Defence of the United Kingdom";

d. If the Information required under clauses B4.a and B4.b has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clauses B4.a and B4.b.

e. If the Contractor becomes aware of any changes in the Information notified previously under clause B4.a, B4.b or B4.d that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Contractor shall notify the Authority promptly of the change.

f. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. The Authority shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.

g. Where the Contract performance requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit an Export Licence Plan for agreement with the Authority.

h. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:

- (1) the Contractor shall, or procure that the Contractor's Subcontractor will, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority;

- (2) the Authority shall provide sufficient Information, certification and other documentation necessary to support the application for the requested variation; and

- (3) the Authority will pay the Contractor a fair and reasonable charge for this service

based on the cost of providing it.

i. Where the Authority provides materiel (Information and items, including software) to enable the Contractor to perform the Contract, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in the provisions of clause B4.a:

(1) the Authority may, or at the request of the Contractor, undertake to give the Contractor a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Contractor's ability to perform the Contract, including, to the extent applicable, to the Contractor's performance of the Contract:

- (a) the exporting nation, including the export licence number (where known);
- (b) the items or Information affected;
- (c) the nature of the restriction and obligation;
- (d) the authorised end use and end users;
- (e) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or Information affected; and
- (f) any specific restrictions on re-transfer or re-export to third parties of the items or Information affected.

(2) this will not include Intellectual Property specific restrictions of the type mentioned in condition D1 (Third Party Intellectual Property – Rights and Restrictions) in relation to the Authority instead of the Contractor.

(3) the Contractor and its Subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority.

(4) the Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under clause B4.j.

j. Where restrictions are advised by the Authority to the Contractor under clause B4.j., the Authority and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a change to the Specification and handled under the terms of condition A3 (Variations to Specification) and the Contract Price or Delivery schedule or both shall be adjusted as appropriate. If the Contractor is unable to perform the Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of the Contract under condition A2 (Amendments to Contract) and A3 (Variations to Specification) and may terminate the Contract if no alternative solution satisfies the essential terms of the Contract. Termination under these circumstances will be under the terms of condition A22 (Termination for Convenience).

k. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Contract.

B5. Environmental Requirements

The Contractor shall in all its operations in performing the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

B6. 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 Schedule 3 (Contract Data Sheet), or if no such requirement is specified, with the MOD stock reference number, Nato Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements);
 - (2) where the Contractor Deliverable has a limited shelf life, the marking shall include: the expiry date / date of manufacture, expressed as specified in Schedule 3 (Contract Data Sheet), or in the absence of such requirement they shall be marked 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, in accordance with DEFCON 129.

B7. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

- a. The Contractor shall pack or have packed the Contractor Deliverables:
- (1) in accordance with any requirements specified in Schedule 2 (Schedule of Requirements) (which if represented by packing codes shall be interpreted by reference to DEFFORM 96 and DEF STAN 81-41 (Part 1));
 - (2) to ensure that each Contractor Deliverable may be transported in an undamaged and serviceable condition.
- b. The Contractor shall ensure that each package containing the Contractor Deliverables is labelled to include:
- (1) the name and address of the Consignor and Consignee as specified in Schedule 3 (Contract Data Sheet) including:
 - (a) the Delivery destination / address if not of the Consignee;
 - (b) the transit destination/address (for aggregation/disaggregation, onward shipment etc.);
 - (2) the DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, or the serial number of the MOD Form 640;
 - (3) the description and quantity of the Contractor Deliverables enclosed;
 - (4) the full 13 digit NATO Stock Number (NSN) where the UK is registered as a user of it, or, where the requirement does not have a NSN, with the alternative reference number specified in Schedule 2 (Schedule of requirements);
 - (5) the makers part, catalogue, serial or batch number as appropriate;
 - (6) the Contract number (call off order numbers if Framework or as appropriate);
 - (7) any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3kg;
 - (8) the Packaging level (military J, N or P, special H, Commercial A etc) as specified in

Schedule 2 (Schedule of Requirements);

(9) where applicable, any particulars which cannot be marked on each Contractor Deliverable in accordance with clause B6.b.;

(10) any additional markings specified in Schedule 2 (Schedule of Requirements);

(11) the Primary Packaged Quantity (PPQ) (if Trade Packaging); and

(12) if Trade Packaging to be marked in blue "TRADE PACKAGE" or if Export Trade Packaging to be marked in black "EXPORT TRADE PACKAGING".

Where UK Military or NATO Packaging is required, labelling of the Contractor Deliverables shall be in accordance with DEF STAN 81-41 (Part 6) and clause B7b.

c. Bar code markings shall be applied to the external surface of each package and to each PPQ package within. The minimum information shall include; the full 13 digit NSN, Denomination of Quantity (D of Q) see DEFFORM 96, actual quantity in package, Serial Number and / or batch number, if applicable. The bar code symbology used shall meet the requirements of STANAG 4329. Code 39 shall be the default symbology for the Packaging marking application. Requirements for positioning bar codes are defined in DEF STAN 81-41 (Part 6).

d. Where the Contractor Deliverables are, or contain Dangerous Goods within the meaning of the Regulations set out in B8.a and B8.b, the Packaging level is always Trade or Export Trade Packaging not Military Level as noted in DEF STAN 81-41 (All Parts).

e. Where UK military or NATO Packaging is required, the Contractor shall meet the requirements as specified in Schedule 2 (Schedule of Requirements). The Contractor Deliverables shall be contained in packages which comply with the requirements of DEF STAN 81-41 (parts 1, 2 and 5) and be capable of meeting the appropriate test requirements of DEF STAN 81-41 (part 3).

f. Where there is requirement to design UK military or NATO level Packaging, the work shall be undertaken by a company which is registered and certified to Military Packaging Accreditation Scheme (MPAS), (ISO 9001 based), or which is able to demonstrate that its quality systems and military package design expertise are of an equivalent standard. Military Level packages shall be designed to comply with the relevant requirements of DEF STAN 81-41; testing to DEF STAN 81-41 (Part 3) or DEF STAN 00-35. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-41 (Part 4).

g. New designs shall not be made where there is an existing SPIS or one that may be easily modified to be in accordance with the contract requirements, (see clause B7.f.). Application should be made to the Project Team (PT) or other access point for a search to establish the SPIS status using DEFFORM 129a (Application for Packaging Designs and Authorisation for Package Design Work); media format as per clause B7.j.

h. Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design.

i. SPIS designs are maintained on a central Master Packaging Database (MPD), the SPIS Index (SPIN), held on the MOD design repository or other authorised secure servers, for monitoring by the MOD and review by MPAS certified contractors and the MOD.

j. All SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format which shall be Adobe "PDF" compatible with Adobe Acrobat version 5. Any other format shall be agreed between the Packaging Design Authority (PDA) and the MOD and must be compatible with access to SPIN.

k. Production of Military Level Packaging; where it is necessary to use a SPIS design the packaging manufacturer should also be a registered Contractor as stated in clause B7.g. The manufacturer is responsible for confirming that the design is suitable.

l. Minor alterations / updates and similar to existing designs may be carried out by MPAS Certificated designers, all major / significant changes and new designs need to be authorised by the Authority's Representative (Project Manager) (unless that power is delegated to a Prime or MPAS Registered company).

m. Intellectual Property Rights (IPR); the MOD shall retain the rights to the SPIS designs or to copy or use any information relating to them, if otherwise specified.

n. Where applicable one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor is the PDA, they shall:

(a) on receipt of instructions received from the Authority's Representative, (Project Manager), prepare the required package design in accordance with DEF STAN 81- 41.

(b) where the Contractor is certified they shall, on completion of any design work, provide the Authority's Representative (Project Manager) with the following documents electronically:

(i) a list of all SPIS which have been prepared or revised against the Contract; and

(ii) a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) where the PDA is not a certified organisation, they shall obtain approval for their design from a certified organisation before proceeding, then continue with clause B7.n.(1)(b).

(2) Where the Packaging contractor is not the PDA and is un-certified, they shall not produce, modify, or update etc. SPIS Designs. They shall obtain current SPIS design(s) from SPIN or a certified organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they shall apply for SPIS information as soon as practicable after receipt of Contract or Order.

(3) Where the Contractor is un-certified and has been given authority to produce, modify, and update SPIS Designs by contract, they shall obtain approval for their design from a certified organisation before proceeding, then continue with clause B7.n.(1)(b).

(4) Where the Contractor is not a PDA but is certified; follow clauses B7.n.(1)(a) and (b).

The Contractor shall note that all documents supplied as SPIS designs shall be considered as Contract Data Requirement.

o. The Contractor shall comply with the requirements for the design of Military Packaging as follows:

(1) Where there is a requirement to design UK Military or NATO Level Packaging, the work shall be undertaken by a certified organisation, or one that although non-certified is able to demonstrate that its Quality Systems and Military Package Design expertise are of an equivalent standard.

The certification scheme (MPAS) detail is available from:

DES IMOC SCP TLS Packaging
MOD Abbey Wood,
Bristol, BS34 8JH

Tel: +44(0)30 679 35353

DESIMOCSCP-TLS-Pkg@mod.uk

(2) Military Level packages shall be designed to comply with the relevant requirements of DEF STAN 81-41; testing to DEF STAN 81-41 (Part 3) or DEF STAN 00-35. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-41 (Part 4);

(3) all Packaging contractors on receipt of a requirement shall search SPIN; or apply for a search of SPIN to establish the SPIS status (using DEFFORM 129a 'Application for Packaging Designs or their Status', media format as per clause B7.g);

(4) new designs shall not be made where there is an existing usable SPIS, or one that may be easily modified;

(5) where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated in this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information as with SPIS, see clause B7.f);

(6) all SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format;

(7) the default electronic media format of a SPIS shall be Adobe "PDF" compatible with SPIN requirements;

(8) manufacture of Military Level Packaging; where it is necessary to use a SPIS design then the packaging manufacturer should also be a certified contractor as per clause B7.a above. The Packaging manufacturer is responsible for confirming that the design is suitable.

p. The Authority shall retain all Intellectual Property Rights (IPR) relating to the designs unless otherwise agreed in writing.

q. If special jigs, tooling etc., are required for the production of military Packaging, the Contractor shall obtain written approval from the Authority's Representative (Commercial) before providing them.

B8. Supply of Hazardous Material or Substance in 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 condition. 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 Schedule 2 (Schedule of Requirements):

(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 Schedule 3 (Contract Data Sheet) (or if no such period is specified no later than one (1) month prior to the Delivery Date), the Contractor shall provide to the Authority's Representatives in the manner and format prescribed in Schedule 3 (Contract Data Sheet) and Schedule 6:

(1) a completed Schedule 6 (Hazardous Articles, Materials or Substances Supplied under the Contract: Data Requirements), confirming 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 B8.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 B8.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;

(4) where the Hazardous Contractor Deliverables are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272 / 2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-85 Design Requirements for Weapons and Associated Systems.

e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority in accordance with clause B8.d for four (4) years after the end of the Contract and shall make them available to the Authority's Representatives on request.

f. Nothing in this condition B8 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

B9. Timber and Wood-Derived Products

a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

(1) shall comply with the Contract Specification; and

(2) must originate either:

(a) from a Legal and Sustainable source; or

(b) from a FLEGT-licensed or equivalent source.

b. In addition to the requirements of clause B9.a above, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

(1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

(2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract complies with the requirements of clause B9.a or B9.b or both.

d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the

Authority's request.

e. If the Contractor has already provided the Authority with the Evidence required under clause B9.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfy the provisions of clauses B9.a and B9.b.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition A23.

g. Notwithstanding clause B9.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

- (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause B9.a and B9.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an "Independent Verification" and resulting report that will:

- (1) verify the forest source of the timber or wood; and
- (2) assess whether the source meets the relevant criteria of clause B9.b.

i. The statistical reporting requirement at clause B9.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition A2.

j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of an Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Commercial Branch identified in the Appendix to Contract.

k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with condition A2.

l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:

- (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
- (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

B10. Certificate of Conformity

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. The Contractor shall consider the CofC to be a record in accordance with condition A23 (Contractor's Records).
- c. The Information provided on the CofC shall include:
- (1) Contractor's name and address;
 - (2) Contractor unique CofC number;
 - (3) Contract number and where applicable Contract amendment number;
 - (4) details of any approved concessions;
 - (5) acquirer name and organisation;
 - (6) Delivery address;
 - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
 - (8) description of Contractor Deliverable, including part number, Specification and configuration status;
 - (9) identification marks, batch and serial numbers in accordance with the Specification;
 - (10) quantities;
 - (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.
- Exceptions or additions to the above are to be documented.
- d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause B10.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain, upon request in accordance with condition A23 (Contractor Records).

C Price

C1. Contract Price

- a. The Contractor shall supply the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to condition G2 the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

D Intellectual Property

D1. Third Party Intellectual Property – Rights and Restrictions

- a. The Contractor shall promptly notify the Authority as soon as they become aware of:
- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
 - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
 - (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract;

clause D1.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a commercial off the shelf (COTS) item or service.

b. If the Information required under clause D1.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This condition shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause D1.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or U K Registered Design, for the purpose of performing the Contract.

g. If, under clause D1.a, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

(2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

(1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.

k. Where authorisation is given by the Authority under clause D1.e, D1.f or D1.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
 - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
 - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
 - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
- (1) clauses D1.a – D1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
 - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
 - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice;
 - (4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise there from and shall provide such information as the other Party may reasonably require;
 - (5) following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
 - (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

E Facilities and Assets

E1. Access to Contractor' Premises

a. The Contractor shall provide to the Authority's Representatives following reasonable notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

F Delivery and Breach Of Contract

F1. Delivery / Collection

a. Schedule 3 (Contract Data Sheet) 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. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:

(1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;

(2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);

(3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;

(4) be responsible for all costs of Delivery; and

(5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:

(1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;

(2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);

(3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;

(4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and

(5) in the case of Overseas consignments, ensure that the Contractor Deliverables

are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).

d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

(1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause F1.b; or

(2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause F1.c.

F2. Acceptance

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

(1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or

(2) the time limit in which to reject the Contractor Deliverables defined in clause F3.b has elapsed.

F3. Rejection

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

b. Rejection of any of the Contractor Deliverables under clause F3.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified within twenty (20) Business Days.

F4. Diversion Orders

a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

b. Where necessary the Authority may issue (or having issued cancel) a Diversion Order for urgent Delivery of the Contractor Deliverables identified in it:

(1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;

(2) any Diversion Order which is beyond the scope of the Contract is to be returned immediately to the Authority's Representative (Commercial) with an appropriate explanation;

(3) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;

(4) the Contractor shall be entitled to any additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as an amendment to the Contract in accordance with condition A2. The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging costs.

F5. Self to Self Delivery

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

F6. Authority's Remedies for Breach of Contract

a. If the Contractor:

- (1) fails to Deliver the Contractor Deliverables (or any part thereof) by the Delivery Date in accordance with clause F1.b;
- (2) fails to ensure that the Contractor Deliverables (or any part thereof) are available for Collection by the Delivery Date in accordance with clause F1.c;
- (3) subject to clause F6.b, fails to supply Contractor Deliverables that comply with the Specification; or
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with condition A18, or fails to supply or withholds the Information, required under clauses A18.a or B8.c and / or B8.d;
- (5) commits a persistent failure by failing to meet either:
 - (a) a single Key Performance Indicator (KPI) on one or more occasions in a rolling period; or
 - (b) one or more KPIs on a rolling period,
 - (c) the number of order lines completed by the agreed delivery date expressed as a percentage of the total number of order lines delivered in the period.

where this Contract includes a KPI regime under Section K; or

- (6) otherwise commits a material breach of its obligations under the Contract,

the Authority shall have the right to exercise one or more of the following remedies:

- (7) where the Contractor commits a persistent failure in accordance with clause F6.a.(5) or where the breach is material, in accordance with clause F6.a.(6), to terminate the Contract or the relevant part thereof with immediate effect by giving written notice to the Contractor;
- (8) reject those Contractor Deliverables that it has not accepted in accordance with condition F2 and return them to the Contractor in accordance with condition F3 and the Contractor shall refund to the Authority any sums paid in respect of the rejected Contractor Deliverables;
- (9) give the Contractor the opportunity at the Contractor's expense to remedy any defect in the Contractor Deliverables, to supply replacement Contractor Deliverables or otherwise to rectify the failure or breach within the Authority-specified time limits;
- (10) to claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (b) obtaining the Contractor Deliverables in substitution from another supplier.

b. The Contractor shall not be liable for the Contractor Deliverables' failure to comply with

the Specification to the extent that any such non-compliance is attributable to one or more of the following circumstances:

- (1) failure by the Authority to install, operate, maintain or store Contractor Deliverables in accordance with any documentation provided by the Contractor;
 - (2) fair wear and tear, misuse, neglect, accident or negligence, repair or modification by the Authority;
 - (3) damage caused by the Authority during transportation of the Contractor Deliverables in accordance with clause F1.c.
- c. This condition F6 shall apply to any repaired or replacement Contractor Deliverables supplied by the Contractor in accordance with clause F6.a.(8).
- d. In the event that the Authority terminates the Contract in whole or in part pursuant to this clause F6.a.(7) or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.
- e. The Authority's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

G Payment And Receipts

G1. Payment

- a. Schedule 3 (Contract Data Sheet) specifies whether payment is to be enabled by P2P, by MOD Form 640, or by AG173. Payment may only be made using P2P where the Contractor has agreed a DEFFORM 30 with the Authority prior to the Effective Date of Contract and the DEFFORM 30 agreement is referenced in Schedule 3 (Contract Data Sheet).
- b. Payment will be made by electronic transfer and prior to submitting any claims for payment under clause G1.e the Contractor shall provide to DBS Finance the name and address of the bank, the sort code and account number to which payment should be made and, if requested by DBS Finance, any further information where payment is to be made outside of the UK.
- c. In order to obtain approval for payment, the Contractor shall, upon completion of the Contract (or any part of the Contract for which the Contractor is entitled to payment):
- (1) where payment is to be made using P2P, submit a properly completed DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes;
 - (2) submit the appropriate coloured copy of MOD Form 640 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet) and complete and dispatch the other appropriate coloured copies of the MOD Form 640 in accordance with the instructions shown therein; or
 - (3) submit a properly completed AG173 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet).
- d. Upon receipt of DEFFORM 129J, the appropriate coloured copy of MOD Form 640 or AG173, the Authority shall without delay:
- (1) approve payment by entering the relevant details into P2P to indicate receipt of the applicable Contractor Deliverables, or completing and signing the brown copy of the MOD Form 640 acknowledging receipt of the Contractor Deliverables, or AG173, and returning it to the Contractor; or
 - (2) notify the Contractor in writing, giving reasons why it considers approval of payment may be withheld.

- e. The Contractor shall submit a claim for payment to DBS Finance by either:
- (1) using a properly prepared message structure and format for invoice payment using P2P in accordance with the arrangements set out, or referenced in DEFFORM 30; or
 - (2) forwarding the completed MOD Form 640 or AG173 signed by the Authority, together with a properly completed DAB Form 10.
- f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:
- (1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and
 - (2) the date of completion of the part of the Contract to which the request for approval of payment relates.
- g. Where using the MOD Form 640 or AG173, the period of thirty (30) days referred to in clause G1.f shall be exclusive of the number of days that elapse between the date the Contractor receives a MOD Form 640 or AG173 from the Authority showing payment approval in accordance with clause G1.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with clause G1.e.
- h. Where the Authority is responsible for Collecting the Contractor Deliverables the Authority shall be deemed not to have received the DEFFORM 129J, MOD Form 640, AG173 or for the purposes of clause G1.c until the earlier of:
- (1) the Contractor Deliverables being received by the Consignee; or
 - (2) five (5) days after the Contractor Deliverables are available for Collection by the Authority as confirmed by the Contractor to the Authority's Representative (Transport) in accordance with clause F1c.(4).
- i. The approval of payment by the Authority under clause G1.d 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 condition F6 or otherwise.
- j. 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 Government Department.

G2. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of any Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the contract price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).
- c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority's Representative. The Contractor shall notify the Authority's Representative of the Authority's VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.
- d. Where the supply of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly

to HMRC any UK output VAT due in respect of the Contractor Deliverables.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

G3. Debt Factoring

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition G3 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.j;
- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both clauses G3.b and G3.c.(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause G3.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

- (1) is made aware of the Authority's continuing rights under clauses G3.a.(1) and G3.a.(2); and
- (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses G3.a.(1) and G3.a.(2).

d. The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

H Contract Administration

H1. Progress Monitoring, Meetings and Reports

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet).

H2. Authority Representatives

a. Any reference to the Authority in respect of:

- (1) the giving of consent;
- (2) the delivering of any Notices; or
- (3) the doing of any other thing that may reasonably be undertaken by an individual

acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition H2.

b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition A2 (Amendments to Contract).

H3. 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 Schedule 3 (Contract Data Sheet);
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), 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.

J. The project specific DEFCONS and DEFCON SC variants that apply to this Contract are:

DEFCON 117 (SC2) Edn 10/13 – Supply of Documentation for NATO Codification Purposes
DEFCON 127 Edn 12/14 - Price Fixing Condition For Contracts of Lesser Value (Note: for the purposes of Amendments to Contract only)
DEFCON 624 (SC2) Edn 03/15 - Use of Asbestos
DEFCON 630 (SC2) Edn 03/15 – Framework Agreements
DEFCON 637 (SC2) Edn 03/15- Defect Investigations and Liability

K. The special conditions that apply to this Contract are:

K1. Key Performance Indicators

The Authority shall measure the performance of the Contractor with reference to the Key Performance Indicators detailed at paragraph 8 below and shall be entitled to claim a Payment Rebate in the event that the Contractor fails to meet the KPI Targets.

1. For purposes of this Condition:
 - a. "Contract Year" shall mean the 12 month period commencing from the date of Contract award and, thereafter, the subsequent 12 month period ;
 - b. "Payment Rebate" shall mean an amount due to the Authority from the Contractor as a result of a failure to meet the applicable KPI Target;
2. The Contractor shall deliver Contractor Deliverables ordered pursuant to this Contract and work with the Authority in order to meet the applicable KPI Target indicated in the tables below.
3. The Authority shall measure and provide the Contractor with a report detailing the Contractors performance against the KPIs in the preceding month and cumulatively from the beginning of the Contract Year to the end of the preceding month. The report shall be an agenda item for discussion at the quarterly meeting.
4. Within 30 days from the end of the Contract Year the Authority shall provide the Contractor with a report detailing the Contractors performance against the KPIs over the Contract Year ("Performance Report"). The report shall be discussed and agreed at the quarterly meeting.
5. Following agreement of the Performance Report the Authority shall be entitled to claim any Payment Rebate due. The Contractor shall credit any Payment Rebate claimed against invoices raised in the month following receipt of the Authority's claim.
6. The Payment Rebate for each KPI in the Contract Year shall be determined from the applicable percentage factor detailed in the Tables below that relates to the performance level achieved during the Contract Year against that KPI ("Percentage Factor"). The Percentage Factor shall be applied to the total price of Contractor Deliverables invoiced by the Contractor in the Contract Year to determine the amount of the Payment Rebate for the relevant KPI.
7. The amount of any Payment Rebate for all KPIs shall not exceed in aggregate an amount greater than 5% of the total price of Contractor Deliverables invoiced by the Contractor during the Contract Year.
8. The KPI Descriptions, Targets and applicable Payment Rebates are as follows:

KPI No 1	Delivery Performance			
KPI Description	The number of order lines completed by the agreed delivery date expressed as a percentage of the total number of order lines delivered in the period. KPI TARGET: More than or equal to 98%			
Performance Level	More than or equal to 98%	Less than 98% but more than or equal to 95%	Less than 95% but more than or equal to 90%	Less than 90%
Payment Rebate	Nil	1.5%	2.0%	2.5%

KPI No 2	New Stores Rejects			
KPI Description	The number of New Stores Rejects raised (where it is agreed that the Contractor is liable) as a percentage of the total number of order lines delivered in the period. KPI TARGET: Less than or equal to 1%			
Performance Level	Less than or equal to 1%	More than 1% but less than or equal to 2%	More than 2% but less than 3%	More than 3%
Payment Rebate	Nil	0.5%	1.0%	1.5%

KPI No 3	Non-Conforming Deliveries (NCDs)			
KPI Description	The number of Non-Conformance Reports issued by the Authority identifying NCDs expressed as a percentage of the total number of order lines delivered KPI TARGET: Less than or equal to 0.5%			
Performance Level	Less than or equal to 0.5%	More than 0.5% but less than 1%	More than 1% but less than 2%	More than 2%
Payment Rebate	Nil	0.5%	1.0%	1.5%

KPI No 4	Response to Request for Quotation (RFQ)			
KPI Description	The extent to which RFQs have been satisfied within the required timescale. KPI TARGET: Response within 10 working days from date that RFQ was issued.			
Performance Level	Less than or equal to 98%	Less than 98% but more than or equal to 95%	Less than 95% but more than or equal to 90%	Less than 90%
Payment Rebate	Nil	0.5%	1.0%	1.5%

K2. Purchase to Payment (This condition shall apply if the resulting Contract is operated on P2P and only until such a time as the Contract migrates to the Babcock DSG electronic Payment system)

Where an offer and acceptance has already taken place off-line to establish the Contract, the Authority shall issue a Purchase Order Message in order to establish Unique Order Identifiers for the Items on the Schedule of requirements for the purpose of subsequent P2P transactions. The Contractor shall respond with an Acknowledgement Message. In these circumstances, Purchase Order Messages serve only to convey to the Contractor the information necessary against which to supply an item, prepare a delivery label and to submit an Invoice Message; the Purchase Order Acknowledgement Message serves only to confirm receipt of a Purchase Order Message. No new contract is understood to be formed by this Purchase Order transaction.

K3. Duration

The duration of the Contract shall be two years from date of placement. The Authority reserves the option to extend the Contract for a maximum of one year from the Contract end date. Notification of the Authority's intention to take up this option shall be made in writing to the Contractor at least six months prior to the Contract end date.

K4. Pricing

Prices must be in £GBP. Prices must be Firm 2 Years, with the option year to be negotiated at the time. Should the Authority take up an option to extend the Contract the Contractor shall be required to submit for the Authority's consideration his proposed prices for the option year at least 3 months prior to expiry of the current price list. In the event that the Contractor does not submit his proposed prices at least 3 months prior to the expiry date of the current price list, the Contractor shall extend the validity of the current price list for an additional period equivalent to the period of the delay.

K5. Safety

Post contract award the Contractor shall provide a suitable safety statement in accordance with JSP 454 (Issue 6) and DefStan 00-56. The statement shall cover the following headings (as a minimum); product details, manufacturing standard, operating envelope, conditions of use, applicable legislation, a hazard log and a simple disposal statement in accordance with the template provided at Annex B to Schedule 2.

In this process it is essential that the Contractor consults with the Authority to ensure that any safety documentation is representative of their combined needs.

K6. Surge Quantities

The quantities on Annex A to Schedule 2 have been provided for evaluation purposes only. Should the Authority have a requirement to purchase quantities in excess of these forecasts, the Authority reserves the right to renegotiate the unit price.

K7. Contract Novation for Contract LSBU15/0015

- 1 The Authority may notify the Contractor that agreement has been reached to transfer the business and assets, or substantially all of the business and assets, of the Authority to Babcock DSG. The Contractor agrees that, if it is so notified by the Authority, then with effect from the Completion Date or other date as stipulated by the Authority at its sole discretion:
 - 1.1.1 The Authority's rights, obligations and liabilities under this Contract will be automatically transferred to Babcock DSG in place of the Authority without the need for any consent or action by the Contractor or the Authority;
 - 1.1.2 Babcock DSG will automatically become responsible for all future obligations (the "Assumed Obligations") owed by the Authority to the Contractor in respect of this Contract;
 - 1.1.3 The Authority will be released automatically from the Assumed Obligations.
- 2 The Contractor further agrees at the request of the Authority to enter into any further agreement or document and take any formal steps which are necessary or desirable at the time to give effect to these provisions.
- 3 If this Contract is novated pursuant to Clause 1.1 above then Babcock DSG shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior written consent of the Contractor.
- 4 The Contractor shall disclose to Babcock DSG such Confidential Information (which may include commercially sensitive information) as may be requested for the operation of the Contract. Where third-party consent is required before such Confidential Information can be disclosed, the Contractor shall use its best endeavours to obtain such consent. Babcock DSG shall only use such Confidential Information for purposes relating to the performance of the Contract and for no other purposes.
- 5 The Authority reserves to itself the right at its sole discretion to appoint an agent to manage this Contract, and to give directions to the Contractor, on its behalf. In the event of such appointment, the Authority will notify the Contractor of the identity of the agent and of the scope of the agent's authority to so act.

L. The processes that apply to this Contract are:

L1. Additional Items – Request for Quotation

Throughout the Contract period, the Authority may identify items of a similar nature to be added to the Schedule 2 – Schedule of Requirements. Subject to the agreement of satisfactory prices, such items shall be formally added by Amendment to Contract in accordance with Clause A2.

L2. New Stores Rejects

If the Authority reasonably considers that any Contractor Deliverable fails to comply in all material respects to the specification, a New Stores Reject (NSR) shall be raised by the Authority. Such

rejection shall be reported to the Contractor in writing, who will manage it in accordance with paragraph 2 and 3.

Once notified in accordance with paragraph 1 the Contractor shall respond to the Authority's Representative (Procurement Branch) within 5 Business Days of receipt detailing its offer of repair and/or replacement at no cost to the Authority. The Authority's Representative (Procurement Branch) shall respond to the Contractors proposed remedy within 5 Business Days.

Once the remedy is agreed between the Authority and the Contractor, the Parties shall agree a reasonable time period within which the NSR shall be fully resolved and the corrected Contractor Deliverables delivered, at the Contractor's cost, to the Authority's stated consignee. Performance in this area shall be measured in accordance with the Key Performance Indicators detailed at Condition K2.

L3. Non-Conforming Deliveries

Please note that following a recent amendment to Joint Service Publication (JSP) 886 Vol 2 Part 1, it is now LS policy to quarantine and reject any Contractor Deliverables that do not conform to the requirements of the contract.

Should any Contractor Deliverables be deemed as non-conforming by LS the Authority will notify the Contractor as to the reason(s) for non-conformance within 5 working days of notification. In accordance with Clause F3 - Rejection, it will be the responsibility of the Contractor, within 5 working days of notification, to either rectify the problem on site at LS or arrange for the Contractor Deliverables to be collected and rectified at the Contractor's premises and returned to LS within 10 working days of collection at no cost to the crown. The list attached details the reasons upon which a consignment may be rejected.

It is advised however that in certain circumstances the Authority may consider it impractical for the Contractor to undertake any rectification due to geographical location, nature of the non-conformance and/or urgency of need, in these situations the Authority may request LS to undertake the rectification action but will pass on any associated costs to the Contractor as necessary.

Reasons for Non-Conformance

- Incorrect DMC/NSN
- Incorrect Description
- Part/Batch No's Incorrect
- Incorrect PPQ
- Incorrect D of Q
- Packaging Level incorrect
- No Bar Code Labelling
- Insufficient/No Test Certificates
- Damaged in Transit
- Incorrectly Labelled
- Incorrect Matcon
- No Logo (ISPM 15) Fail
- Mixed NSN
- Non Codified Item
- No Engineering Record Card
- No Labelling
- No Paperwork
- No weight Label
- In adequate Shelf Life
- No hazard Data Sheet
- Incorrect Quantity - Surplus

The level of non-conforming deliveries shall be measured in accordance with the Key Performance Indicators detailed at Condition K3 and any failure to meet the required level of performance shall be subject to the remedies contained therein.

L4. Order Book Reconciliation Report

On a monthly basis, the Authority shall provide the Contractor with an Order Book Reconciliation Report. The report shall detail all orders that are considered open, confirming order number, Contract Deliverables ordered, quantities and Confirmed Delivery Date. The Contractor shall respond within 5

business days of the date of issue of the report to confirm any anomalies in the orders listed, any orders considered open but not listed, details of orders that have since been dispatched, and, for those orders that remain outstanding, confirmation that the Confirmed Delivery Date shall be achieved.