

Contract Number IRM21/7572

For

The Remanufacture, Repair and Maintenance of TN15 and TN54 Transmissions and Associated Assemblies

Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland*	And
Team Name and address:	David Brown Santasalo UK Limited
IRM Procurement Repair Team	Park Works, Park Road
Babcock Land Defence Limited	Lockwood
Building B15, MOD Donnington	Huddersfield
Telford	West Yorkshire
TF2 8JT	HD4 5DD
	Company Number: 06624684

**This contract is managed by Babcock Land Defence Limited ('Babcock') acting as agent to the Authority pursuant to the Land Equipment Service and Transformation Contract (Contract No. LECON/1006) dated 1 April 2015. Any reference to Babcock or named Babcock employees within this contract shall be construed as Babcock or the Babcock employees acting as agent to the Authority.*

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1. DEFCONs and DEFFORMS

1.1 The following General Conditions shall apply to the Contract.

DEFCON 15 (06/21) – Design Rights and Rights to Use Design Information

DEFCON 16 (06/21) – Repair and Maintenance Information

DEFCON 21 (06/21) – Retention of Records

DEFCON 23 (06/21) – Special Jigs, Tooling and Test Equipment

DEFCON 35 (06/21) – Progress Payments

DEFCON 68 (10/22) – Supply of Data for Hazardous Articles, Materials and Substances

DEFCON 76 (11/22) - Contractor's Personnel at Government Establishments

DEFCON 90 (06/21) – Copyright

DEFCON 113 (02/17) – Diversion orders

DEFCON 129 (02/22) – Packaging (for Articles other than munitions)

DEFCON 501 (10/21) – Definitions and Interpretations

DEFCON 503 (06/22) – Formal Amendments to Contract

DEFCON 507 (07/21) – Delivery

DEFCON 513 (04/22) – Value Added Tax

DEFCON 514 (08/15) – Material Breach

DEFCON 515 (06/21) – Bankruptcy and Insolvency

DEFCON 516 (04/12) – Equality

DEFCON 518 (02/17) – Transfer

DEFCON 520 (10/23) – Corrupt Gifts and Payments of Commission

DEFCON 524 (12/21) – Rejection

DEFCON 524A (12/22) – Counterfeit Material

DEFCON 525 (10/98) – Acceptance

DEFCON 526 (08/02) – Notices

DEFCON 527 (09/97) – Waiver

DEFCON 528 (10/23) – Import and Export Licences

DEFCON 529 (09/97) – Law (English)

DEFCON 530 (12/14) – Dispute Resolution

DEFCON 531 (09/21) – Disclosure of Information

DEFCON 532A (05/22) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 534 (06/21) – Subcontracting & Prompt Payments

DEFCON 537 (12/21) – Rights of Third Parties

DEFCON 538 (06/02) – Severability

DEFCON 539 (01/22) – Transparency DEFCON 550 (02/14) – Child Labour and Employment Law DEFCON 566 (10/20) – Change of Control of Contractor

DEFCON 601 (04/14) – Redundant Material

DEFCON 602A (04/23) – Quality Assurance (With Deliverable Quality Plan)

DEFCON 604 (06/14) – Progress Reports

DEFCON 606 (07/21) – Change and Configuration Control Procedure

DEFCON 608 (07/21) – Access to Facilities to be Provided by the Contractor

DEFCON 609 (07/21) – Contractor's Records

DEFCON 611 (12/22) – Issued Property

DEFCON 620 (06/22) – Contract Change Control Procedure

DEFCON 621B (10/04) – Transport (If the Contractor Is Responsible For Transport)

DEFCON 624 (08/22) – Use of Asbestos

DEFCON 627 (11/21) – Requirement for a Certificate of Conformity

DEFCON 630 (02/18) – Framework Agreements

DEFCON 632 (11/21) – Third Party Intellectual Property – Rights and Restrictions

DEFCON 637 (05/17) – Defect Investigation and Liability

DEFCON 642 (07/21) – Progress Meetings

DEFCON 644 (07/18) – Marking of Articles

DEFCON 649 (12/21) – Vesting

DEFCON 656B (08/16) – Termination for Convenience

DEFCON 658 (10/22) – Cyber *Further to DEFCON 658 the Cyber Risk Profile of the Contract is Very Low, as defined in Def Stan 05-138*

DEFCON 671 (10/22) – Plastic Packaging Tax

DEFCON 675 (03/21) – Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)

DEFCON 678 (09/19) – SME Spend Data Collection

DEFCON 694 (07/21) – Accounting for Property of the Authority

DEFCON 800 (12/14) – Qualifying Defence Contract

DEFCON 801 (12/14) – Amendments to Qualifying Defence Contracts – Consolidated Versions

DEFCON 802 (12/14) – QDC: Open-Book on subcontracts that are not Qualifying Sub-Contracts (QSC)

DEFCON 804 (03/15) – QDC: Confidentiality of Single Source Contract Regulations Information

2. Duration

2.1 This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in 2.2 unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

2.2 The Effective Date of Contract is the date of Contract signature by both parties and the contract shall expire on 18th January 2029

Option Years

2.3 The Option Years shall be priced in accordance with Clause 3 – Annual Pricing

2.4 Both Option Years shall be exercised at the same time by mutual agreement. No later than 18 months prior to the end of the Contract, the Authority shall communicate to the Contractor its intention to exercise the two Option Years. No later than 12 months prior to contract expiry the Contractor shall provide acceptance of the Authority's intention, or notification of rejection with supporting reasons for refusal.

3. Annual Pricing

- a. Subject to the provisions of this clause, the Contract Price is a Firm Price for each item listed in Appendix 1 to Annex A.
- b. The Contract Price consist of two elements, the Allowable Costs and the Contract Profit Rate.
- c. No less than 4 months prior to the end of each Contract Year, the Contractor shall submit to the Authority's agent a revised Contract Pricing Statement (CPS) setting out:-
 - i. updated estimates for the Allowable Costs for the next Contract Year. The Contractor shall only be permitted to submit updated estimates in relation to Allowable Costs set out in the CPS and its supporting documents, including contractor pricing models as submitted and agreed by the Contractor and the Authority for the first Contract Year; and
 - ii. a revised Contract Profit Rate, to be calculated as set out below,

for review and approval by the Authority.
- d. The process for calculating the Contract Profit Rate will be as follows:-
 - i. the Cost Risk Adjustment (Step 2), Profit on Cost once Adjustment ('POCO' (Step 3)), Incentive Adjustment (Step 5) will remain as agreed for year 1 during the lifetime of the Contract;
 - ii. the Baseline Profit Rate (Step 1) and Single Source Regulations Office (SSRO) Funding Adjustment (Step 4) and Capital Servicing Adjustment (Step 6) will change in line with the rates published annually by the SSRO which come into effect on 1 April each year;
- e. If the updated Allowable Costs and the revised Contract Profit Rate are both agreed by the Authority, the CPS submitted by the Contractor shall be accepted.
- f. If either the updated Allowable Costs (or any of them) or the revised Contract Profit Rate are not agreed by the Authority, the dispute shall first be attempted to be settled in accordance

with DEFCON 530, or, at either Parties absolute discretion, referred to the SSRO for determination (if applicable).

- g. If the new Contract Year in respect of which updated Allowable Costs and a revised Contract Profit Rate have been submitted starts prior to the same having been agreed or finally determined, the Contract Price agreed for prior Contract Year shall continue to apply provisionally until such time as an amendment reflecting the new Contract Price has been agreed.
- h. Upon agreement or determination of each of the updated Allowable Costs and the revised Contract Profit Rate, the parties shall amend the Contract to give effect to the new Contract Price.
- i. Once updated Allowable Costs and the revised Contract Profit Rate are agreed the new Contract Price shall be applied to all Articles subject to an Order placed on and from the date on which the new Contract Year started and provisionally priced at the previous Contract Year's Contract Price and:
 - i. where the amount in respect of an Article has already been paid, the Contractor shall:
 - (A) be entitled to invoice for any increase per Article between the previous Contract Year's Contract Price and the new agreed Contract Price; or
 - (B) repay to the Authority any decrease per Article between the previous Contract year's Price and the new Contract Year's Price; and
 - ii. where the amount in respect of an Article has been invoiced but not paid, the Authority shall issue an updated Order using the new Contract Price and the Contractor shall invoice against the new Order.
- j. The Final Price Adjustment (in accordance with the Single Source Contract Regulations 2014 and any supporting guidance, determinations or rules established by the Single Source Regulations Office ('SSRO') and/or the Secretary of State for Defence) will be undertaken at the expiry of the Contract, and be applied to each Contract year individually applying the Contract Pricing Statement in place at the applicable time.

Cost Plus Pricing – TN54 Test Rig NRE

- k. The contract price in respect to the tasking for the Test Rig NRE as identified at Annex A, Appendix 2 is deemed to be Cost Plus and shall be calculated using the total actual Allowable Costs incurred by the Contractor at the completion of the Task. For the purposes of agreeing the price for this task only, an adjusted profit rate shall apply based upon the use of a (-)25% Contract Risk Adjustment (CRA) and calculated in accordance with terms of the 6 Step Profit Calculation of the Defence Reform Act 2014. The initial pricing of the Test Rig NRE task shall be deemed to be Provisional Priced due to the absence of agreed Single Source Government Rates and the Cost Plus nature of the agreement (ie, both direct Labour and resource costs). The Parties may agree a revised Provisional Price on the agreement of promulgated rates. The Authority shall also make interim payments in accordance with DEFCON 35 (Progress Payments) against the Progress Payment Schedule identified at Annex A, Appendix 2 in respect to the Contractors claim(s) provided that the sums claimed are deemed AAR based upon the submission of satisfactory supporting evidence based upon the activities and schedule detailed at Annex A, Appendix 2. The final price fixing shall be subject to assessment in accordance with the Regulations to determine the acceptance of Allowable costs and appropriate recoveries.

Inventory Stock

I. (i) The Authority agrees to the sum of £■■■■ (‘Inventory Stock Value’) for the pre-positioning of Inventory Stock to be used by the Contractor against the output of the Contract. The Inventory Stock Value is as calculated against that stock identified at Annex A Appendix 3 – entitled TN54 Inventory Stock (including Raw Material). The Contractor shall be permitted to submit a claim for such stock post Contract placement and on verification of such holdings conducted and approved by the Authority’s Representative.

(ii) During the time in which the Inventory Stock is held by it the Contractor shall not be required to exclude the costs of the Inventory Stock from its pricing of Articles which incorporate any such Inventory Stock items but the Contractor shall, unless otherwise agreed with the Authority, be required to replace the used items at its own expense to reconstitute the full Inventory Stock.

(iii) The sum paid under this Contract for Inventory Stock shall be used to off-set any future settlement made in respect to the agreed Final Price Adjustment (FPA) for Contract No. IRM16/1186 in respect of which the Contractor has and will make a claim for an adjustment to the Contract Price of Contract No. IRM16/1186 by an amount greater than the Inventory Stock Value. *Upon conclusion of the Final Price Adjustment (FPA) for Contract No. IRM16/1186, an adjustment shall be made to the resulting Contract Price of that Contract (IRM16/1186) and the following provisions shall apply:*

- (A) In the event that the value of final agreed FPA settlement is greater than the value of the Inventory Stock Value then ownership of the Inventory Stock shall revert to the Contractor for the Inventory Stock Value and any balance will be paid by the Authority to the Contractor; or
- (B) In the event that the final agreed FPA settlement against IRM16/1186 is less than the Inventory Stock Value, ownership of the Inventory Stock shall revert to the Contractor and the Authority shall reserve the right to recover by agreement the amount by which the final agreed FPA settlement is less than the Inventory Stock Value from any future Contract (annual) pricing or in accordance with the terms of Clause 18(e).

4. Insurance

4.1 The Contractor shall, at its own expense, maintain in effect at all times during the performance of this Contract such insurance policies:

4.1.1 as it is required to hold under applicable Laws and regulation; and

4.1.2 Public and Product Liability insurance of an amount not less than

GBP (£■■■ per event or series of events with a reputable third party insurance company, of good financial standing and appropriately regulated (the Insurance Policies)

4.2 The Contractor shall at the Authority’s request and within reasonable timescales provide certificates evidencing such insurance. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of any of its liabilities and obligations under this Contract.

4.3 The Contractor shall at all times comply with the terms of the Insurance Policies (including paying all premiums and other moneys payable, notifying circumstances which might give rise to claims, and making claims), and shall not do or permit to be done anything which might render any of the Insurance Policies void or voidable or entitle the insurer to refuse to pay any claim or part of a claim

4.4 If, for whatever reason, the Contractor fails to give effect to and maintain the Insurance Policies, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

4.5 The Contractor shall ensure that any Sub-Contractor maintains adequate insurances having regard to the obligations under this Contract which they are contracted to fulfil.

5 Definitions

5.1 In addition to the provisions of DEFCON 501 the following definitions shall apply

Remanufacture – shall be deemed to include refurbishment, enhancements, rectification, modification, upgrading, repairing, overhaul and testing in accordance with the latest version of the relevant agreed specification as required by the Authority.

Remanufactured – shall be defined as when an Article has undergone the Remanufacture process, resulting in the Article being returned to A1 condition in accordance with the latest version of the relevant agreed specification.

A1 and A1 condition - as defined in Stores System Data Code Book – Material Condition section.

Distance Between Failures – Shall mean distance, expressed in kilometres, covered by vehicles in-service using the subject Articles, measured by Odometer, or other method of measurement as agreed.

Service Counter Reading SCR – a service counter reading is a measurement of revolutions of the input gear train. For the avoidance of doubt, the SCR and Gearbox Usage Monitor (GBUM) on TN15 Transmissions shall only be reset to zero after complete or upgrade level of Remanufacture.

Transmission – shall mean complete TN15 or TN54 Transmission unit irrespective of version or build standard.

Failure – shall mean the Articles have been sentenced by the Authority as being unsatisfactory other than as a result of an act or omission of the Authority.

Contract Year – shall mean the period from the Effective Date until 31st March 2024 (inclusive), and each successive 12-month period while the Contract is in existence, including extension Option years 1 and 2 (if applicable). Contract Years align with the Authority's financial year and do not align exactly with the anniversaries of the Effective Date, meaning that there will be more Contract Years than calendar years in the duration and that the first and last Contract Years will not be 12 months in duration.

Obsolete – Is when a Contractor Deliverable subject to this agreement

- a. Is no longer available from the approved manufacturer in accordance with the contracted specification
- b. can no longer be produced in accordance with the specification detailed in the manufacturing drawing pack (if available)

Obsolescent – Is when a Contractor Deliverable subject to this agreement

- a. Is known to have a limited stock availability without the ability or intention to reinstate production
- b. Has had an End of Life (EOL), End of Production (EOP) or Product Discontinuation Notice (PDN) issued but is still available
- c. Has had an Product Change Notice (PCN) issued which means the item will no longer be compliant with the contracted specification but is still available in its compliant state
- d. Will have future production to the contracted specification prevented or limited by a known future regulation change
- e. Will have future production to the contracted specification prevented or limited by any other known future event.

6. Disclosure of Information

6.1 Further to DEFCON 531, no information regarding the services being provided under this Contract, or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Authority to whom any Press or other similar media enquiry on any such matter should be referred.

7. Articles Considered Beyond Economic Repair (BER)

7.1 If the Contractor considers an Article issued for Remanufacture to be BER the Contractor shall immediately advise the Repair Manager (Box 2 on DF111) of his findings and any associated costs on Application For BER Form (Annex M to Contract). The Repair Manager shall review the findings and if in agreement shall issue AFG 1043 detailing disposal instructions. For TN54 and TN15 BER is defined as being when the cost of Remanufacture of an Article exceeds 150% of the value of the contracted fixed Price for that Article.

7.2 Except as specified below, no work shall be carried out on any Article issued for Remanufacture which the Contractor considered to be BER.

7.3 Where instructed by the Repair Manager, the Contractor may dismantle an Article which the Repair Manager has agreed is BER if serviceable or repairable parts will thereby be recovered and such action is economical. If parts recovered are of the type covered by Embodiment Loans then details of parts recovered shall be brought on charge in the contractor's Embodiment Loan account. If parts recovered in this way may be used in the Remanufacture of other Articles under the Contract and are of the type sourced by the Contractor then the Contractor will either return them to the Authority for use as spares (Authority to pay transport costs) or, subject to prior approval of a fair and reasonable price by the Repair Manager and the Contract Manager, offset the costs of such parts against future Remanufactures.

8. Authority Audit of Work

8.1 The Authority or its authorised Agent reserves the right to audit any activity relevant to work under this Contract subject to prior arrangement. This includes, but is not limited to, checking the Contractor's assessment of repair categories as defined in the Statement of Work at Annex B.

8.2 For that purpose the Contractor grants to the Authority and any auditors (both external and internal) a right of access to the Contractor's premises. Where the Authority intends to use any external parties, access shall be subject to the Authority demonstrating that suitable confidentiality arrangements are in place to protect the Contractor's information. The Contractor shall cause its subcontractors to grant to similar access to such subcontractors' premises, systems and information. The Authority shall give reasonable notice during normal business hours of such an audit and the Contractor shall provide all necessary facilities free of charge.

8.3 The Contractor will (and shall use reasonable endeavours to cause its subcontractors to) fully cooperate, in a timely manner, with the Authority and provide the Authority such assistance as they may reasonably request in connection with any audit.

8.4 If any audit identifies that the Contractor, or any subcontractor, is not in compliance with its obligations under this Contract, the Contractor must promptly take all actions necessary (at its sole cost and expense except to the extent they result from or are caused by Authority of its obligations under this Contract) to remedy the issue and to bring itself and its subcontractors (as applicable) into compliance.

9 Authority to Work

9.1 A Purchase Order will be sent to the Contractor at the same time as Articles are issued by the Authority to the Contractor for Remanufacture. The Authority shall not be liable in any way for work undertaken by the Contractor without receipt of this Purchase Order, each of which shall bear a unique order number and Job Number.

The Purchase Order shall be sent electronically to:

9.2 Nothing said, or omitted to be said, by an Authority representative, in writing or otherwise, shall constitute authority to undertake any work whatsoever unless authorised in accordance with this Condition.

9.3 Following receipt of the Purchase Order and Articles for Remanufacture the Contractor is to assess whether the work required in order to bring an Article(s) to the standard required is within the scope in the Schedule of Requirements. If it is then the Contractor will proceed without seeking any further authorisation from the Authority but will compile a detailed examination report detailing the work that has been undertaken.

9.4 Where work would be required in order to bring an Article(s) to the standard required outside of the scope as set out in the Schedule of Requirements, a Survey Report (a sample of which is in Annex N) shall be submitted to the Repair Manager and must fully identify the requirement for all additional work relating to the Article including a full breakdown of costs in 45 business days (unless otherwise agreed) of receipt of the Article. No work (other than the work required to provide the Survey Report) is to be undertaken by the Contractor until the Survey Report (including any additional costs not included in the Firm Price) have been approved by the Repair Manager and written authority is given to proceed from the Repair Manager.

10. Disposal of Redundant Material

10.1 All parts, material etc. arising from the Articles issued for Remanufacture, whether serviceable or not, shall remain the property of the Authority and any such parts not used in the repair of the Articles shall be disposed of as set out in the remainder of this clause.

10.2 Serviceable and economically repairable parts shall be dealt with in accordance with the instructions of the Authority as set out in Clause 8.3.

10.3 All unserviceable parts, materials etc. certified by the Repair Manager as workshop salvage shall be disposed of by the Contractor on behalf of the Authority on fair and reasonable terms. Where required by the Repair Manager, such parts, materials etc., shall be dismantled and disposed of under his supervision so as to preclude the possibility of re-sale in their existing form. Parts and materials certified for disposal must be disposed of in accordance with all relevant legislation.

10.4 A list of all unserviceable parts, materials etc. disposed of under the provisions of the above, countersigned by the Repair Manager shall be provided to the Contract Manager (Box 1 DF111) as per template at Annex C including a statement of proceeds quarterly.

11. Quality Assurance

11.1 The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements, and shall allocate sufficient resources to the provision of the Contractor Deliverables to enable it to comply with this obligation.

11.2 The Contractor shall submit a Deliverable Quality Plan which must be set out as defined in AQAP 2105 Edition C Version 1 January 2019 and delivered to the Authority (Quality) at ITT stage. Subject to any improvements, amendments or revisions requested by the Authority, the Quality Plan shall be incorporated into the Contract as per Annex O. The Contractor shall remain at all times solely responsible for the accuracy, suitability, and applicability of the Deliverable Quality Plan.

11.3 The Contractor shall comply with any applicable quality assurance requirements specified in this clause 12 and/or in the Schedule of Requirements and/or which are otherwise applicable to the provision of the Contractor Deliverables in accordance with this Contract. The quality assurance requirements applicable to this Contract shall include, but are not limited to:

- AQAP 2110 Edition D Version 1 NATO Quality Assurance Requirements for Design, Development and Production. CofC shall be provided in accordance with DEFCON 627
- A deliverable quality plan is required in accordance with DEFCON 602A 12/17 and AQAP 2105 NATO Requirements for Deliverable Quality Plans Edition 2.
- Def Stan 00-056 Part 1, Issue 7 – Safety Management Requirements for Defence Systems - Requirements and Guidance
- Def Stan 00-056 Part 2, Issue 5 – Safety Management Requirements for Defence Systems - Guidance on Establishing a Means of Complying with Part 1 Issue 5
- Def Stan 03-32 Pre-treatment and Painting of Vehicles, Engineer Equipment and Components - Systems for Non-Ferrous Metals Excluding Aluminium Alloy for Armour and Structural Applications Issue 5.
- Def Stan 05-057 - Configuration Management of Defence Materiel, Issue No: 8
- Def Stan 05-061 Part 1, Issue 7 - Quality Assurance Procedural Requirements - Concessions.
- Def Stan.05-061 Part 9, Issue 6 - Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items.
- Def Stan 05-099 Part 1, Issue 1 – Managing Government Furnished Equipment in Industry
- Def Stan 05-135, Issue 2 – Avoidance of Counterfeit Materiel
- Def Stan 81-041 – Packaging Requirements is in six parts and more than one part may apply to any one packaging requirement. It is essential that all parts be considered and used where appropriate. Military Level Packaging (MLP) material and services to be carried out by suppliers accredited to Military Packaging Accreditation Scheme (MPAS), unless specifically authorised otherwise by the Authority under Def Stan 05-61 Part 1 'Concessions'. It shall be noted that items within the scope of this Requirement are highly sensitive and therefore subject to greater risk of damage during transit and storage.
- Def Stan 80-225 (Paint, Finishing, Polyurethane, Multi-Pack) issue 1 Paint System - Low VOC Single or Multi-Pak.

11.4 The Contractor shall comply with all applicable legislation.

11.5 The Contractor shall discharge its obligations under this Contract with reasonable care and diligence.

11.6 The Contractor shall:

- a) observe, and ensure that its staff and any subcontractors and their staff observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises when they are present on those premises;
- b) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables;

12 Supply of Articles and Parts

12.1 Articles for Remanufacture shall be issued to the Contractor and shall be issued subject to the provisions of DEFCON 611 (Issued Property). All Articles issued for Remanufacture shall be delivered to the Contractor by the Authority's transport.

12.2 The Contractor is advised that no guarantee can be given or responsibility accepted by the Authority regarding the completeness or correctness of Articles issued for Remanufacture, or give indications of the repairs required. The Contractor shall be responsible for making good any Reasonable Deficiencies in Articles issued for Remanufacture up to the Reasonable Deficiency Cap within the

appropriate Fixed Price(s) contained in Schedule of Requirements and its appendices, excluding any Reasonable Deficiencies in Articles which have been caused by war damage, fire damage, external physical damage and drowning. If an Article is issued for Remanufacture with Reasonable Deficiencies which exceed the Reasonable Deficiency Cap then the Contractor shall notify the Repair Manager. Following confirmation from the Repair Manager on the appropriate course of the action, the Contractor is to complete MOD Form 445 (Discrepancy Report) an example of a MOD Form 445 is Annex J.

For the purposes of this Condition, a Reasonable Deficiency shall be defined to be missing parts in an Article issued for Remanufacture and the Reasonable Deficiency Cap shall be defined as £■ (cumulative value) of Reasonable Deficiencies per Article issued for Remanufacture. The Authority reserves the right to review the Reasonable Deficiency Cap and, subject to the agreement of the Contractor, revise the value.

The Discrepancy report should be sent to:

- i. One Copy to MAC Branch Donnington
- ii. One Copy to the Repair Manager

12.3 The Contractor will be responsible for the supply of all spares required to bring an Article into a Remanufactured state in accordance with the relevant OEM Specification and/or the requirements of this Contract. All spares used must be in accordance with the Specification. Certificates of Conformity must be made available for all spares used and for compliance with the Contract. These Certificates of Conformity will be retained at the Contractor's premises for inspection by the Authority upon request in accordance with DEFCON 609.

12.4 Under the terms of the Contract, DEFCON 649 – Vesting shall only apply to those articles and/or materiel constructed or provisioned for in respect to Annex A Appendices 2 and 3 (ie, Test Rig NRE and Inventory Stock (and Raw Materiel). In respect to those Special Jigs, Tools Etc constructed under Annex A Appendix 2, the Special Jigs, Tools Etc (s) are deemed to include any installation systems funded by the Authority.

12.5 At the point in time when all significant components of the Test Rig are on order and the value of the Test Rig is reliably understood the Authority and the Contractor shall agree an increase to the cap in Clause 24.4.1.3 below to add the value of the Test Rig to the existing cap figure.

13. **Surge**

13.1 The Contractor shall have a surge production capability to cope with times of tension, Transition to War (TTW), other operational needs and war.

13.2 The Authority will provide the Contractor with as much notice of surge requirements as possible. However, in particular circumstances, the notice period could be no less than 7 days. The Contractor shall maintain plans to meet future surge requirements.

13.3 Surge capability is defined as an increase in output derived from re-deployment of resources, overtime, additional shifts or additional labour. The levels of surge capability required from the Contractor in a six month period, are as follows:

- i. Up to 12 % increase in capacity (based on the mean workload of the previous 12 months prior to the surge requirement) sustained for up to 4 months; and
- ii. Up to 30 % increase in capacity (based on the mean workload of the previous 12 months prior to the surge requirement) sustained for up to 2 months.

13.4 For example a surge at the 12 % level could be increased to a maximum of 30% (one or more times) in the period concerned. Also during any war, there would be a continuing production requirement at up to the surge capacities.

13.5 The Authority agrees to use its best endeavours to assist the Contractor with the supply of spares to meet surge requirements.

13.6 Surge shall be by notification to the Contractor from the Authority.

14. Warranty

14.1 The provisions of this Clause 14 shall apply to the warranties set out in clauses 15 (Warranty TN54) and 16 (Warranty TN15)

14.2 The provisions of the warranties are expressly limited to material and workmanship carried out during the Remanufacture process by the Contractor. The warranties shall not apply to Articles that are outside the scope of this Contract. In the event that the Contractor incurs reasonable costs in ascertaining the cause of defects which are subsequently agreed by the Authority not to be attributable to him, the Authority will, subject to the agreement of the Authority's Repair Manager pay the appropriate cost in accordance with the Contract.

14.3 Failure caused by neglect, misuse and damage (NM&D) not attributable to the Contractor or his servants and agents, once proven will invalidate the Warranties.

14.4 The Warranties set out in clauses 15 to 16 shall be entirely without prejudice to warranties implied by law, and the Authority's rights under clause 24 (material breach) of this Contract. The Contractor's liability in the event of a warranty claim shall be limited to repair, or where necessary replacement, of the relevant Article in accordance with clauses 15 to 16 and to reimburse the Authority for any losses or damage to its physical property caused by the warranty defect.

15. Warranty TN54

15.1 The Contractor shall not be held liable under this Contract for any losses, damages, expenses, costs and liabilities incurred or suffered by the Authority if the TN54 ETS Transmission Heat Exchanger (ETS THE) suffers failure during the warranty period, nor will the Contractor be liable where the TN54 Transmission suffers Failure during the Warranty Period where the cause of the Failure can be directly attributed to the failure of the TN54 ETS Transmission Heat Exchanger (ETS THE)

15.2 The warranty set out in this clause 15 applies to TN54. If, when packaged in accordance with the provisions of the contract, within 3 years from the date of despatch from the Contractor, 400 SCR from the last service at DBS or 1 year from when a Remanufactured Article (TN54) is deployed back into service, whichever is the soonest, any material used or workmanship carried out during the Remanufacture process by the Contractor suffers Failure the full cost of rectification (to include all parts and labour) shall be borne by the Contractor. This includes the cost of surface transport to and from the Authority's nominated UK destination.

15.3 Deployed back into service shall be deemed as the point at which the Remanufactured Article is fitted to a vehicle. The Authority and the Contractor shall take cognisance of all relevant factors including, but not limited to Oil Health Monitoring (OHM) data when determining the date an Article is deployed back into service. Following review of these factors a deployed back into service date is to be agreed by both parties in order for the warranty to be applied to the Article.

15.4 Articles returned to the Contractor and Remanufactured under this Condition shall be undertaken within mutually acceptable timescales to be agreed between the Authority's Repair Manager and the Contractor.

15.5 The warranty in this clause 15 shall not apply in respect of any Articles for which the Authority is not able to provide the Contractor:

- (a) JAMES Component Reports (Supersedes EFR) for failed item;
- (b) OHM Data for failed item; and
- (c) JAMES extract detailing the maintenance record for failed item for the first 12 months of operation in a vehicle, in accordance with 'Maintenance Schedule AESP 601'. (For the avoidance of doubt, written records that maintenance tasks have been carried out in line with AESP 601 are to be provided).

16. Warranty TN15

16.1 The warranty set out in this clause 16 applies to TN15. If, when packaged in accordance with the provisions of the contract, within 3 years from the date of despatch from the Contractor, 1,500 kilometres or 1 year from when a Remanufactured Article (TN15) is deployed back into service, whichever is the soonest, any material used or workmanship carried out during the Remanufacture process by the Contractor suffers Failure the full cost of rectification (to include all parts and labour) shall be borne by the Contractor. This includes the cost of surface transport to and from the Authority's nominated UK destination.

16.2 Deployed back into service shall be deemed as the point at which the Remanufactured Article is fitted to a vehicle. The contractor is to ensure the Gearbox Usage Monitor (GBUM) converted reading to kilometres is entered on the strip report. The Authority and the Contractor shall take cognisance of all relevant factors including but not limited to the GBUM conversion data when determining the date an Article is deployed back into service. Following review of these factors a deployed back into service date is to be agreed by both parties in order for the warranty to be applied to the Article. Where the Gearbox Usage Monitor (GBUM) is not serviceable and in full working order upon receipt to allow David Brown to take the reading, the Authority shall provide to the Contractor any reasonably available mileage data and supporting data to assist the parties in agreeing the deployed back into service date

16.3 Articles returned to the Contractor and Remanufactured under this Condition shall be undertaken within mutually acceptable timescales agreed between the Authority's Repair Manager and the Contractor.

16.4 The warranty in this clause 16 shall not apply to in respect of any Articles for which the Authority is not able to provide the Contractor:

- (a) JAMES Component Reports (Supersedes EFR) for failed item;
- (b) JAMES extract detailing the maintenance record for failed item for the first 12 months of operation in a vehicle, in accordance with 'Maintenance Schedule AESP 601'. (For the avoidance of doubt, written records that maintenance tasks have been carried out in line with AESP 601 are to be provided).

17. Delivery

a) All Contract Deliverables shall be shipped in accordance with the requirements stated in the Contract and shall be subject to the provision of DEFCON 507 (Delivery).

b) The Contractor shall (or procure that any of its subcontractors shall) comply with the requirements set out in the Logistics Commodities Services Transformation Authority Managed Material Supplier Manual (Version 2 – LDOC/CMO/V2.0 dated 28 June 2019) issued by the Authority and published on the Authority's Knowledge in Defence (KiD) system (as amended from time to time) (the "LCST Supplier Manual") in respect of all Articles which are:

- i. supplied by the Contractor or any of its subcontractors under this Contract; and
- ii. which are to be delivered to depots which are managed and/or operated by Leidos Europe Ltd or its subcontractors pursuant to the Logistics Commodities and Services (Transformation) contract (Contract No. LCST/0001) ("LCS(T) Managed Depots").

c) Please note that until otherwise instructed, Barcode Labelling shall be in accordance with Issue 9 of Def Stan 81-041 Part 6

d) In the event that the Contractor does not adhere to the time of delivery notified by Babcock Land Defence Limited - DSG, Babcock Land Defence Limited shall not be held responsible for any subsequent claim by the Contractor, nor be held liable to meet any additional charges incurred by the Contractor through failure to deliver on the due date at the appointed time

e) Each consignment is to be accompanied by a delivery note.

17.2 Self to Self Delivery

Where any Article to be supplied under the Contract is to be delivered otherwise than being handed over by the Contractor to the Authority, for example where an Article is to be delivered by the Contractor to his own premises or to those of a sub-contractor, the risk in such Articles shall (notwithstanding the provisions of DEFCON 612) remain vested in the Contractor until such time as the Article is handed over to the Authority.

17.3 Non-Conforming Deliveries

a. It is policy for LEIDOS and Sub-Contractor Kuehne and Nagel – the Authority's Contractors for Logistics and Commodities Services (LCS) – to quarantine and reject any Contractor Deliverables that do not conform to the requirements of the contract.

b. Should any Contractor Deliverables be deemed as non-conforming by LEIDOS, the Authority will notify the Contractor as to the reason(s) for non-conformance within 5 working days of notification. In accordance with Clause 17 it will be the responsibility of the Contractor, within 5 working days of notification, to either rectify the problem on site at LEIDOS or arrange for the Contractor Deliverables to be collected and rectified at the Contractor's premises and a return delivery date confirmed with Leidos within 10 working days of collection at no cost to the Authority. The list at 17 d. details the reasons upon which a consignment may be rejected.

c. 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 LCS to undertake the rectification action but will pass on any associated costs to the Contractor as necessary.

d. Reasons for Non-Conformance include:

- (1) Incorrect DMC/NSN
- (2) Incorrect Description
- (3) Part/Batch No's Incorrect
- (4) Incorrect PPQ
- (5) Incorrect D of Q
- (6) Packaging Level incorrect
- (7) No Bar Code Labelling
- (8) Insufficient/No Test Certificates
- (9) Damaged in Transit
- (10) Incorrectly Labelled
- (11) Incorrect Matcon
- (12) No Logo (ISPM 15) Fail

- (13) Mixed NSN
- (14) Non-Codified Item
- (15) No Engineering Record Card
- (16) No Labelling
- (17) No Paperwork
- (18) No weight Label
- (19) In adequate Shelf Life
- (20) No hazard Data Sheet
- (21) Incorrect Quantity – Surplus
- (22) No Certificate of Conformity

e. The level of non-conforming deliveries shall be measured in accordance with the Key Performance Indicators detailed at clause 27 and any failure to meet the required level of performance shall be subject to the remedies contained therein.

The Authority's rights under this clause 17.3 (Non-Conforming Deliveries) shall be entirely without prejudice to the Authority's rights and remedies under the Contract including (without limitation) DEFCON 524 (Rejection).

18. **Payment**

- a. The Contractor shall raise a commercial invoice per purchase order, except in the event that part delivery has been expressly permitted by the Authority when a commercial invoice shall be raised per delivery
- b. Each Commercial Invoice shall be in the name of Babcock Land Defence Limited (acting as agent for the Authority) and must include;
 - (i) Contractor's name and contact details and registered number and registered address.
 - (ii) VAT Registration number
 - (iii) Date & Tax point date
 - (iv) Invoice Number
 - (v) Purchase Order Number
 - (vi) Description of the Goods and/or Services; and
 - (vii) Net and Gross VAT values
 - (viii) All supporting documentation required under these clauses and as reasonably requested by the Authority
 - (ix) delivery note.

And submit via email to:

The Authority is entitled to reject invoices which do not conform to these requirements.

- c. The Authority (acting through its agent, Babcock Land Defence Limited) shall pay all valid and undisputed claims for payment submitted by the Contractor in accordance with clause 18.b on or before the day which is thirty (30) days after the later of;
 - (i) the day upon which a valid request for payment is received by the Authority; and
 - (ii) the date of completion of the part of the Contract to which the request for approval of payment relates.

- d. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.
- e. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

19. Exit Condition of Remanufactured and Modified Articles

19.1 The LRU shall meet the criteria set out in the latest issue of the agreed Test Documentation (TD494 for TN15, TD601 for TN54 and TD468 for SVB)

19.2 The transmission documentation as specified in the Rework Procedure shall be updated detailing all work and modifications completed on the Transmission during the Remanufacture process.

19.3 Articles Remanufactured under the Contract shall have a label/plate permanently affixed, in a prominent position, showing the following information:

- I. with the Job Number allocated by the Repair Manager (Box 2 of DF111), e.g. PR/1***** (Batch Number/DIIN), as quoted on the relevant Repair Notification Call-in (RNCI) form or PO number
- II. the Contract Number
- III. the Item Serial Number where appropriate
- IV. the Date of Repair.
- V. Latest modification state incorporated

19.4 For transmissions being enhanced as well as Remanufactured, the transmission will also be issued with a new configuration control document indicating its new build standard and a new part number.

19.5 The Oil Health Monitoring reading taken after exit testing shall be the start date for oil health condition

19.6 The following documentation shall be sent to the Authority (with a copy sent to the Repair Manager) with each return of an Article following Remanufacture (Box 2 on the DF111)

- I. Certificate of Conformance
- II. Modification Embodiment Certificate and Inspection Record
- III. Assembly Record Card – Section 8
- IV. Examination Report

19.7 The Contractor shall not fit plates quoting their name address or telephone number. TN15E gearboxes shall have the Gearbox Breathers painted blue and TN15E+ gearboxes shall have the Gearbox Breathers painted red.

20. Oil Health Monitoring (OHM)

20.1 OHM shall be provided and managed by the Contractor for the OHM Service.

20.2 The Contractor and the Authority shall have access to the system in order to download data applicable to TN54 and TN15 Transmissions, this data shall be used to assist in determining:

- I. The condition of the Transmission
- II. Where relevant the reason for failure

20.3 Sampling

TN54 only – Prior to inward testing and on completion of work oil samples are to be taken from all Transmissions and dispatched for analysis within 2 weeks.

20.4 Sample kits can be requested from the Authority as required.

20.5 The Contractor shall provide the Repair Manager (Box 2 of DF111) with details, for all Transmissions, of material specification for Transmission components that are or could be in contact with the Transmission oil:

- I. Where components are modified and there is a change to the material specification
- II. Where a new component is fitted as part of a Remanufacture

21. Remedies in the Event of Failure to Achieve Turnaround Time.

21.1 It is recognised by the Parties that if the Contractor fails to deliver any of the Articles by the date(s) specified in the agreed monthly Delivery Plan (at Annex S), the Authority will suffer loss and damage.

21.2 At each quarterly review meeting the Parties will review the finalised monthly Delivery Plan for the preceding three months for the TN54. If the Contractor has failed to achieve the cumulative output quantity (not by PR number) agreed in the previous three finalised monthly Delivery Plan combined, for reasons solely attributable to the Contractor, then the Contractor shall pay liquidated damages on the number of units that it has failed to meet the cumulative output quantity. The liquidated damages amounts are tiered and set out in the table 3 below.

Worked Example: Over a period of 3 months the Contractor fails to meet its agreed cumulative TN54 output by 5 units:

$$TN54 (3 \times £\text{█}) + (2 \times £\text{█}) = £\text{█}$$

Table 3

	Units 1-3	Units 4-6	Units 7 or more
TN54	£█	£█	£█

21.4 This Condition sets out the sole damages remedy for delay but is without prejudice to any other rights of the Authority under the Contract. Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under clause 21.1 above until the date of such termination.

21.4 Unless expressly stated by the Authority in writing, the provisions of DEFCON 527 (Waiver) shall apply to the Authority's right to recover Liquidated Damages under this Clause.

22. Force Majeure

22.1. The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

- a. acts of nature;
- b. war;
- c. hostilities;
- d. fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence.

- e. nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of a breach of this contract by the Contractor or its Sub-Contractors;
- f. national strikes;

22.2. The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.

22.3. Subject to Clause 22.4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

22.4. The maximum extension of time granted under this clause shall be limited to 6 months after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.

23. Material Breach or Insolvency

23.1 In the event that the Contract is terminated in accordance with the provisions of DEFCON 514 (Material Breach) and/or DEFCON 515 (Bankruptcy and Insolvency), the Contractor shall licence, free of charge, the Data Package to the Authority for the purposes of ensuring that a replacement Contractor can carry out the Contractor's obligations under the Contract but for no other purpose. The Data Package shall remain confidential and shall only be disclosed to employees of the replacement contractor on a need to know basis. The Data Package shall contain all relevant information necessary to enable the Authority to reproduce, maintain, remanufacture and support all Articles under this Contract.

23.2 The Authority shall use all reasonable endeavours to undertake to agree a Non-Disclosure Agreement with the replacement contractor should this become necessary.

24. Limitation of Contractor's Liability

LIMITATIONS ON LIABILITY

Definitions

24.1 In this Condition 26 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"Charges" means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor's other obligations under this Contract, as determined in accordance with this Contract;

"Data Protection Legislation" means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

(1) UK GDPR;

(2) DPA 2018; and

(3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

"Default" means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority

responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

'DPA 2018' means the Data Protection Act 2018;

"Law" means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

"Term" means the period commencing on the date on which this Contract takes effect and ending on the expiry detailed at Clause 2 or on earlier termination of this Contract. '

'UK GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

Unlimited liabilities

24.2. Neither Party limits its liability for:

24.2.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

24.2.2. fraud or fraudulent misrepresentation by it or its employees;

24.2.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

24.2.4. any liability to the extent it cannot be limited or excluded by law.

24.3. The financial caps on liability set out in Clauses 24.4 and 24.5 below shall not apply to the following:

24.3.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

24.3.1.1. the Contractor's indemnity in relation to DEFCON 632 (Third Party IP - Rights and Restrictions);

24.3.2. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

24.3.2.1. the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);

24.3.3. breach by the Contractor of DEFCON 532A and Data Protection Legislation; and

24.3.4. to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

24.3.5. For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 24.4 and/or 24.5 below.

Financial limits

24.4. Subject to Clauses 24.2 and 24.3 and to the maximum extent permitted by Law:

24.4.1. throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

- 24.4.1.1. in respect of DEFCON 76 £ in aggregate;
- 24.4.1.2. in respect of DEFCON 514 £ in aggregate;
- 24.4.1.3. in respect of DEFCON 611 £ in aggregate; and
- 24.4.1.4. in respect of DEFCON 612 £ in aggregate;

24.4.2. without limiting Clause 24.4.1 and subject always to Clauses 24.2, 24.3 and 24.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £ in aggregate;

24.4.3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 24.4.1 and 24.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 24.4.1 and 24.4.2 of this Contract.

24.5. Subject to Clauses 24.2, 24.3 and 24.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

24.6. Clause 24.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

24.7. Subject to Clauses 24.2, 24.3 and 24.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- 24.7.1. indirect loss or damage;
- 24.7.2. special loss or damage;
- 24.7.3. consequential loss or damage;
- 24.7.4. loss of profits (whether direct or indirect);
- 24.7.5. loss of turnover (whether direct or indirect);
- 24.7.6. loss of business opportunities (whether direct or indirect); or
- 24.7.7. damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.

24.8. The provisions of Clause 24.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

24.8.1. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

- 24.8.1.1. to any third party;
- 24.8.1.2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
- 24.8.1.3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

24.8.2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

24.8.3. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

24.8.4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

24.8.5. damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;

24.8.6. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;

24.8.7. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);

24.8.8. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

24.8.9. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

24.9. If any limitation or provision contained or expressly referred to in this Condition 24 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 24.

Third party claims or losses

24.10. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

26.10.1. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

24.10.2. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery.

24.11. Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

25. Contract Status Report

Within the first 2 working days of each month a Contract Status Report will be generated and issued to the contractor.

The contractor shall update the report in accordance with the instructions in the accompanying email and as follows:

- i. **Updated Repair price (each);**
 - a. Where standard repair/remanufacture prices have been agreed within the Contract, the contractor shall insert the firm price specific to the PR reference following completion of Inward Test and repair level designation. In the absence of a repair level being designated, the cell shall be left blank;
 - b. Where the standard repair/remanufacture prices have not been agreed within the Contract the contractor shall insert the strip and survey value approved by the Repair Manager for that PR reference;
- ii. **Confirmed delivery date** – to be completed in the format DD/MM/YYYY;
- iii. **Supplier comments** – if applicable;
- iv. **Accrual costs** – to be entered as £ and not as a percentage;

No other changes or deletions are to be made.

The completed report is to be returned within 5 working days of receipt to ■ and copied to the relevant Repair Manager (as identified at Box 2 of the most recently issued DEFFORM 111 (Annex C)).

26. Contract Review Meetings (Local Equipment Repair Committee (LERCs))

Further to DEFCON 642, Review Meetings shall be held once a quarter following contract award. The meeting agenda shall include as a minimum:

- I. Review of equipment performance monitors
- II. Review of the Key Performance Indicators as set out in clause 27 (Key Performance Indicators)
- III. Commercial review
- IV. Financial review
- V. Risk Register
- VI. Tasking review
- VII. Output against the quarterly plan
- VIII. Contract Status Report (Annex I to the Contract)
- IX. Time to Repair
- X. Technical Review
- XI. Review of equipment failure data.

The Contractor shall provide a secretary and be responsible for distribution of the minutes within 10 working days of the meeting.

27. Key Performance Indicators (KPIs)

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance indicators (KPIs) below:

KPI Area	Target	Responsibility	Review Dates
Delivery Performance	100% of Articles repaired and delivered within the timescales agreed in the finalised Delivery Plan	Contractor	Monthly intervals commencing 1 month from contract start date
	Report by exception reasons for finalised Delivery Plan timescale failure and advise what actions have been put in place to prevent reoccurrence.	Contractor	At monthly intervals commencing 1 month from contract start date
Warranty Repairs	Contractor to report on number of Articles that require rectification under warranty within 3 months of repair	Contractor	At quarterly intervals commencing 3 months from contract start date
Progress of Articles	100% of Contract Status Report submissions to the authority within 5 working days of receipt	Contractor	At monthly intervals commencing 1 month from contract start date
Contract Amendments	The Contractor shall complete and return the DEFFORM 10B (the content of which has been pre-agreed) to the Procurement Branch within 10 Business Days.	Contractor	As required
Certificate of Conformity	Certificates of Conformity shall be made available to the Authority within 10 business days when requested.	Contractor	As required
Minutes of meetings	The Contractor will provide 100% minutes of meetings within 10 business days of the Local Equipment/Commercial Review Meetings to the Authority	Contractor	At quarterly intervals commencing 3 months from contract start
Obsolescence	Obsolescence issues shall be advised to the Authority within 10 working days of identification	Contractor	As required
Non-Conforming Material	NCM's are to be investigated and a-Corrective Action and Preventative Action plan submitted and returned to BLDL Repair Manager within 20 business days from either collection of the affected Articles by the Contractor, or inspection of the Goods by the Contractor at the Authority's site.	Contractor	At monthly intervals commencing 3 months from contract start

28. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. All terms implied by law are expressly excluded to the maximum extent legally

permissible. 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.

29. Order of Precedence

If there is any conflict or inconsistency between any parts of this Contract the following order of precedence shall apply:

- a) the clauses of this main body of this Contract
- b) any DEFCONS referenced in clause 1 or elsewhere in this Contract
- c) Annex A – Schedule of Requirements
- d) Annex B– Statement of Work; then
- e) any other documents or any part thereof referred to in the Conditions or Annexes.

30 Obsolescence Management and Continuity of Supply

30.1 The parties will follow the Obsolescence Management process set out in Annex R

31. Associated Items – Request for Quotation

Throughout the Contract period, the Authority may identify associated items to be added to Annex A – Schedule of Requirements. Subject to the agreement of the parties, including with relation to satisfactory prices, such items shall be formally added by Amendment to Contract in accordance with DEFCON 503.

32. Provisional Price QDC

32.1 The parties recognise that each has a legal obligation, under section 20 of the Defence Reform Act 2014, to be satisfied that the costs included in the contract price are Appropriate, Attributable and Reasonable (together 'AAR'). The parties also recognise that, at the time of contract award, the information provided to the Authority by **David Brown Santasalo** is not sufficient to allow the Authority to be satisfied that all the costs included in the contract price are AAR. The parties have identified at **Annex A Appendix 1** those costs or categories of costs in respect of which further information must be provided before an 'AAR assessment' can be made. Accordingly, the parties agree that **David Brown Santasalo** will provide to the Authority, by **01.12.2023**, such information as agreed to enable the Authority to be satisfied that those identified costs included in the contract price are AAR or, alternatively, to enable the Authority to be satisfied as to what revised quantum of costs would be AAR. Following that provision of information and the Authority's analysis thereof, the parties shall meet by **04.03.2024** to consider whether, and if so in what respect, it is necessary to re-price the Contract in accordance with the Schedule to the Single Source Contract Regulations 2014. Without prejudice to any other right which the Authority may have, in the event that the Authority does not consider that **David Brown Santasalo** has complied with its obligation under this **clause 32**, or it is still not satisfied that the costs included in the contract price are AAR by **01.12.2024**, it intends to refer the contract to the SSRO for a determination of allowable costs, pursuant to section 20 of the Defence Reform Act 2014. Nothing in this clause shall prejudice the rights of the Contractor to at any time make an application to the SSRO for a determination of allowable costs, pursuant to section 20 of the Defence Reform Act 2014.

32.2 In respect to the prices cited under the Contract at placement, the following shall apply:

- a. That pricing recorded against Annex A, Appendix 1 for FY23/24 shall be deemed Provisional. This is in respect to the application of Labour Charging Rates only and the calculation of applicable Profit. The hours, material costs and recoveries are deemed allowable.

- b. That pricing recorded against Annex A, Appendix 2 for the Test Rig NRE, shall be treated as Cost Plus. Noting that this price is treated as under a Cost-Plus arrangement, it shall be subject to review and price fixing on completion. Furthermore, Prices are also deemed to be Provisional due to the application of Labour Charging Rates, the calculation of Profit and the final agreement of all allowable cost elements (ie, Total Price).

Furthermore, any future annual pricing under Annex A, Appendix 1, where either future Labour Rates have not been agreed or annual prices have not been deemed allowable under the terms of the regulation, any future contract pricing shall be deemed to be provisional.

33. Contract Change Control Procedure

For the purposes of the Contract, Clause 13 of Defcon 620 shall not apply.

34. Notification of IPR Restrictions

Deform 711 is to be completed by Contractor only in respect of any new parts which are to be incorporated into the design during the duration of this contract.

35. Delivery Plan

35.1 No later than December 31st of each year the Babcock Repair Manager will advise the Contractor of the number of assets to be loaded for the following Contract Year. Following this Babcock and DBS will agree a provisional Delivery Plan per month based on the number of repairs advised, the report (Annex S – Monthly Delivery Output Plan). The provisional Delivery Plan will:

a. not require the Contract to output more than ■ repairs per year, unless agreed between the parties at their discretion, and notwithstanding that agreed under Clause 13 - Surge; and

b. the provisional Delivery Plan will assume a mix of repair levels comprising the monthly total units set out in the table below. The parties acknowledge that: (i) the complexity (necessary machining and assembly labour) of the repair levels increases in descending order in the table below; (ii) the percentages in the table below are an approximation; and (iii) it is recognised that there will be Upgrades but this expected to be a low % that would not amount to 1 Article in an average month so has been excluded for planning purposes.

Category	Assumed % of total loaded
Minor	
SUE & Light	
Complete E & Complete ETS	
Upgrade	
Total	

35.2 No later than the 15th of every month, the Contractor shall finalise and set out the Delivery Plan for the following month. The finalised Delivery Plan will be based upon the provisional Delivery Plan with any necessary adjustments to reflect any increase in the complexity (and consequently the necessary machining and assembly labour) of the actual required repair levels of the units the Contractor is working on versus the assumed % totals from the provisional Delivery Plan.

35.3 Performance against the finalised Delivery Plan shall be an agenda item for discussion at Contract performance Review progress meetings held in accordance with DEFCON 642 .

36. **DEFCON 23**


36.1 The Parties agree that with respect to the application of DEFCON 23:

- (a) the Contractor shall be entitled to recover from the Authority the costs it incurs in maintaining and calibrating the Special Jigs, Tools Etc in good order provided all such costs are AAR under the single source rules. Routine activities will be recovered through the Contractor's recover rates and extraordinary expenditure will be the subject of individual claims; and
- (b) the Contractor shall not be liable for the consequences of any breakdown or unavailability of the Special Jigs, Tools Etc unless such breakdown or unavailability has been caused by the Supplier failing to take the steps reasonably necessary properly maintain the Special Jigs, Tools Etc or has a result of negligent acts or omissions of the Contractor. In respect to either a breakdown or unavailability of the Special Jig, Tools etc which will impact the delivery against the Contract, the Contractor shall notify the Authority's representative within 1 working day of such failure and provide within no more than 2 working days after the event a mitigation plan. Furthermore, any major failures or breakdowns should be supported by the presentation of a breakdown report to the Authority's representative which should also highlight the cause together with any details of both incomplete or test failure against scheduled maintenance activities.


Contract IRM21/7572 for the Remanufacture, Repair and Maintenance of TN54, TN15 Transmissions and Associated Assemblies.

This Contract shall come into effect on the date of signature by both parties.

For and on behalf of the Company Name David Brown Santasalo UK Limited:

Name, Title and Company Position	Global Defence Director
Signature	
Date	19.01.2024

For and on behalf of the Secretary of State for Defence:

Name, Title and Company Position	Commercial Director
Signature	
Date	19.01.2024