

Specimen - For Drafting Purposes Only

BOND GIVEN BY A BANK AS A DEED IN RESPECT OF A SINGLE CONTRACT

Name of Issuing Bank:

Address:

To: The Secretary of State for Defence

We refer to the contract number [insert number] (the 'contract'), as may be amended at any time, to be awarded / awarded on [insert contract date] to [insert contractor's full corporate name] whose registered number is [insert company registered number] (the 'contractor') and we hereby irrevocably and unconditionally agree:

1. to pay you any amount or amounts not exceeding in aggregate the sum of £[insert sum] upon receipt by us at [insert address] of your first demand in writing certifying that any one or more of the following has occurred:
 - a) the contractor has failed in any respect duly to perform and observe, or is otherwise in breach of any of its obligations in and arising from the contract; or
 - b) any of the contractor's obligations in and arising from the contract are or become void, voidable, unenforceable or otherwise ineffective; or
 - c) the contract has been terminated owing to a breach or an event of default on the part of the contractor; or
 - d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the contractor's undertaking or assets;

For the purposes of this bond any such demand and certification(s) shall be conclusive evidence (and admissible as such) of the statements and the amounts claimed therein;

2. that this bond shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the contractor or any other person or, where the contractor is a partnership, by any change in the partners;

3. that we shall not be discharged or released from our obligations under this bond by any arrangement or agreement made between you and the contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the contractor, or by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to our disadvantage, to or of, the obligations imposed upon the contractor or any other person or by any forbearance granted by you to the contractor or any other person as to payment, time, performance or otherwise or by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this bond relates or by any other matter or thing which but for this provision might exonerate us and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without our knowledge or assent;

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4. that no failure to exercise or any delay in exercising on your part any right or remedy under this bond or under the contract or any other agreement shall operate as a waiver of such right or remedy;
5. that no settlement or discharge between you and us or the contractor shall be effective if any payment to you in respect of the contractor's or our obligations to you is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, you shall be entitled to recover from us the amount of such payment as if such settlement or discharge had not occurred;
6. that you shall not be obliged, before exercising any of your rights under this bond, to take any action against, or make any demand from, the contractor or any other person;
7. that our obligations under this bond are continuing obligations and shall not be considered satisfied, settled or terminated by your giving of any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by you of any right or remedy under or arising from this bond shall prevent any further exercise;
8. that any demand(s) complying with all the requirements hereof must be received by us on or before [insert date];
9. that all payments under this bond shall be made without set-off, counter claim or other deduction;
10. that this bond shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

(The following clause should only be used where the bank is outside of England and Wales)

11. we irrevocably appoint Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as our agents to accept on our behalf service of all process and other documents of whatever description to be served on us in connection with this bond or any related matter.

Dated this [] day of [] 20[]

Executed as a deed by [full name of party] as Attorney and on behalf of [bank]¹ in the presence of:

.....[signature of party]

.....[Signature of Witness (Bank Official)]
[Address of Witness]
[Occupation of Witness]

¹ This execution clause should be changed if the bank or other corporate entity giving the bond is executing it in one of the other methods listed in the accompanying guidance (see Execution).

Explanatory Notes

1. These explanatory notes are to assist in the completion of the DEFFORM 24A and should not be included in your completed Bond.
2. DEFFORM 24A is an 'on demand' bond provided by the financial markets (normally a bank or insurance company). The purpose of obtaining a bond is to ensure that the MOD is reimbursed for any extra expenditure it may incur in making alternative arrangements in the event of the company failing to fulfil any of its contractual obligations and the MOD having the contract completed elsewhere.
3. Where the financial markets provide the indemnity, the Indemnifier will invariably charge a premium to cover its risk, and this should be borne by the company without additional expense to the MOD. The extent of the cover that the market is willing to provide, and the level of premium sought, will provide a valuable independent assessment of the company's financial standing and prospects.

Guidance On Completion

4. The specimen wording of the DEFFORM should be suitable for most circumstances and should not be changed at the request of an Indemnifier. You must seek Commercial Legal Services (CLS-CL) advice if the Indemnifier requests a revision to the template DEFFORM.

Introductory Paragraph

5. Insert the name and address of the Indemnifier, the contractor's name and, if applicable, registration number of the contractor (unless the contractor is a UK partnership or an overseas company it will be shown on the company letterhead) and the contract / tender details and dates and edit as appropriate.

Paragraph 1

6. Covers the Indemnifier's obligations to the MOD. As a bank, by its regulations, has to limit its liability, there is a provision to insert a maximum sum. Covers the circumstances under which the indemnity may be activated.

Paragraph 2

7. Maintains the validity of the bond even if the contractor changes its name, status and even ownership or control etc.

Paragraph 3

8. Prevents the Indemnifier from subsequently avoiding its responsibilities even if there have been any amendments to the contract.

Paragraph 4

9. Safeguards the MOD in the event of the MOD's failure or delay to call on the bond.

Paragraph 5

10. Covers the scenario where the MOD may have received payment in settlement of a dispute but that payment then becomes void (e.g. if the payee soon thereafter becomes insolvent). The Indemnifier still remains liable for the amount of the voided payment.

Paragraph 6

11. Confirms that the MOD may seek recompense from the Indemnifier without first having to attempt to make recovery from the contractor.

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Paragraph 7

12. Confirms that the MOD taking delivery of goods, or making any claim under the deed, does not relieve the Indemnifier from its ongoing liability under the deed.

Paragraph 8

13. This is self explanatory. The inserted date will be the expiry date of the bond.

Paragraph 9

14. This is self explanatory.

Paragraph 10

15. Confirms that English law applies to the bond, no matter which national law may apply to any contract. Also, if the contractor is not subject to English law, the MOD may use the contractor's national law in order to enforce any claim that may be agreed.

Paragraph 11

16. Delete this clause if the Indemnifier is an English company (i.e. a company incorporated in England or Wales). If the Indemnifier is a foreign company, then the paragraph should be retained. In either case you should delete the introductory words in bold.

Execution

For the bond to be effective it is essential that it is executed correctly. This is achieved by ensuring that it is properly signed. The template execution clause in the bond provides for signature by a named Attorney on behalf of the bank. This is the most common method of execution in practice. You should ask for a copy of the power of Attorney to check that the person signing the bond has the requisite authority to do so. As an alternative, the deed may be signed by two directors of the Indemnifier, or by one director and the company secretary, or by a director in the presence of a witness who attests the signature. If any of these alternatives are used, the signature block should be changed to reflect this. It is now not strictly necessary for the Indemnifier to apply its corporate seal - although the MOD may request it.