

Call-Off Schedule 23 – Optional Provisions

Part A - Secret Matters

Associated definitions:

In this Part A to Call-Off Schedule 23, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Document"	includes specifications, plans, drawings, photographs and books;
"Secret Matter"	means any matter connected with or arising out of the performance of this Call-Off Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';
"Servant"	where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

1. Disclosure

- 1.1 The Supplier shall not, either before or after the completion or termination of this Call-Off Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:

1.1.1 without the prior consent in writing of the Buyer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

1.1.2 disclosed to or acquired by a person as respects whom the Buyer has given to the Supplier a notice in writing which has not been cancelled stating that the Buyer requires that Secret Matters shall not be disclosed to that person;

1.1.3 without the prior consent in writing of the Buyer, disclosed to or acquired by any person who is not a Servant of the Supplier; or

1.1.4 disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call-Off Contract that such person shall have the information.

2. Safeguarding

- 2.1 Without prejudice to the provisions of Paragraph 1, the Supplier shall, both before and after the completion or termination of this Call-Off Contract, take all reasonable steps to ensure:

2.1.1 no such person as is mentioned in Paragraph 1.1, 1.1.1 or 1.1.2, thereof shall have access to any item or Document under the control of the Supplier containing information about a Secret Matter except with the prior consent in writing of the Buyer;

2.1.2 that no visitor to any premises in which there is any item to be supplied under this Call-Off Contract or where Goods are being supplied shall see or discuss with the Supplier or any person employed by him any Secret Matter unless the visitor is authorised in writing by the Buyer so to do;

2.1.3 that no photograph of any item to be supplied under this Call-Off Contract or any portions of the Goods shall be taken except insofar as may be necessary for the proper performance of this Call-Off Contract or with the prior consent in writing of the Buyer, and that no such photograph shall, without such consent, be published or otherwise circulated;

2.1.4 that all information about any Secret Matter and every Document, model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call-Off Contract or with the prior consent in writing of the Buyer, no copies of or extracts from any such Document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such Document, model or item shall be placed thereon; and

2.1.5 that if the Buyer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such Document, model or item as is mentioned in Paragraph 2.1.4, that Document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Buyer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

3. Decision of the Buyer

- 3.1 The decision of the Buyer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Part A to Call-Off Schedule 23 shall be final and conclusive.

4. Particulars of People

- 4.1 If and when directed by the Buyer, the Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.

5. Official Secrets Act

- 5.1 If and when directed by the Buyer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of the Call-Off Contract.

6. Information concerning the Contract

- 6.1 If, at any time either before or after the expiry or termination of this Call-Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call-Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Buyer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.

7. Duty to observe obligations

- 7.1 The Supplier shall place every person employed by it, other than a Sub contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that Secret Matter as are imposed on the Supplier by Paragraphs 1 and 2 and shall, if directed by the Buyer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Part A to Call-Off Schedule 23 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.

8. Sub-Contract Obligations

- 8.1 The Supplier shall, if directed by the Buyer, include in the Sub-Contract provisions in such terms as the Buyer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Part A to Call-Off Schedule 23, but with such variations (if any) as the Buyer may consider necessary. Further the Supplier shall:
- 8.1.1 give such notices, directions, requirements and decisions to its Sub Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Part A to Call-Off Schedule 23 into operation in such cases and to such extent as the Buyer may direct;
 - 8.1.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Part A to Call-Off Schedule 23, notify such breach forthwith to the Customer; and

8.1.3 if and when so required by the Buyer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Paragraph 11.

9. Information to the Buyer

9.1 The Supplier shall give the Buyer such information and particulars as the Buyer may from time to time require for the purposes of satisfying the Buyer that the obligations imposed by or under the foregoing provisions of this Part A to Call-Off Schedule 23 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Buyer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call-Off Contract or in which there is or will be any item to be supplied under this Call-Off Contract, and also to inspect any Document or item in any such premises or which is being made or used for the purposes of this Call-Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

10. Exclusion

10.1 Nothing in this Part A to Call-Off Schedule 23 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

11. Grounds for Termination

11.1 If the Buyer shall consider that any of the following events has occurred:

11.1.1 that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Part A to Call-Off Schedule 23; or

11.1.2 that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Buyer, or with any department or person acting on behalf of the Crown; or

11.1.3 that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in Paragraph 11.1.1, information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Buyer, ought not to have such information;

and shall also decide that the interests of the state require the termination of this Call-Off Contract, the Buyer may by notice in writing terminate this Call-Off Contract forthwith.

12. Buyer Decision to Terminate

12.1 A decision of the Buyer to terminate this Call-Off Contract in accordance with the provisions of Paragraph 11 shall be final and conclusive and it shall

not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Buyer's decision is based.

13. Supplier's notice

- 13.1 The Supplier may within five (5) Working Days of the termination of this Call-Off Contract in accordance with the provisions of Paragraph 11, give the Buyer notice in writing requesting the Buyer to state whether the event upon which the Buyer's decision to terminate was based is an event mentioned in Paragraphs 11.1.1, 11.1.2 or 11.1.3 and to give particulars of that event; and
- 13.2 the Buyer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

14. Matters pursuant to termination

- 14.1 The termination of this Call-Off Contract pursuant to Paragraph 11 shall be without prejudice to any rights of either Party which shall have accrued before the date of such termination;
- 14.2 The Supplier shall be entitled to be paid for any work or thing done under this Call-Off Contract and accepted but not paid for by the Buyer at the date of such termination either at the price which would have been payable under this Call-Off Contract if the Call-Off Contract had not been terminated, or at a reasonable price;
- 14.3 The Buyer may take over any work or thing done or made under this Call-Off Contract (whether completed or not) and not accepted at the date of such termination which the Buyer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Part A to Call-Off Schedule 23 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Buyer, deliver any work or thing taken over under this Paragraph 14.3, and take all such other steps as may be reasonably necessary to enable the Buyer to have the full benefit of any work or thing taken over under this Paragraph 14.3 ; and
- 14.4 Save as aforesaid, the Supplier shall not be entitled to any payment from the Buyer after the termination of this Call-Off Contract.

15. Rights & Obligations after Termination

- 15.1 If, after notice of termination of this Call-Off Contract pursuant to the provisions of Paragraph 11:
- 15.1.1 the Buyer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Paragraph 13.1; or
- 15.1.2 the Buyer shall state in the statement and particulars detailed in Paragraph 13.2 that the event upon which the Buyer's

decision to terminate this Call-Off Contract was based is an event mentioned in Paragraph.11.1.3,

the respective rights and obligations of the Supplier and the Buyer shall be terminated in accordance with the following provisions:

- 15.2 the Buyer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call-Off Contract under the provisions of Paragraph 11 and properly provided by or supplied to the Supplier for the performance of this Call-Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Buyer, elect to retain;
- 15.3 the Supplier shall prepare and deliver to the Buyer within an agreed period or in default of agreement within such period as the Buyer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Buyer and shall deliver such materials and items in accordance with the directions of the Buyer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- 15.4 the Buyer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call-Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call-Off Contract;
- 15.5 if hardship to the Supplier should arise from the operation of this Paragraph 15 it shall be open to the Supplier to refer the circumstances to the Buyer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Buyer on any matter arising out of this Paragraph 15.5 shall be final and conclusive; and
- 15.6 subject to the operation of Paragraphs 15.2, 15.3, 15.4, and 15.5 termination of this Call-Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.