



Ministry  
of Defence

## Specialist Vehicles and Uncrewed Land Systems (SVULS) Team

Contract No: 711646450

For:

### Protected and Modified Civilian Profiled Vehicles Framework

### Terms & Conditions

Between the Secretary of State for  
Defence of the United Kingdom of Great  
Britain and Northern Ireland

And

Team Name and address:

Specialist Vehicles and Uncrewed Land  
Systems (SVULS)

Elm 1B, NH4, MOD Abbey Wood Bristol,  
BS34 8JH

Contractor Name and address:

E-mail Address:

Telephone Number:

E-mail Address: *"Redacted due to containing  
someone's name"*

## Contents

General Conditions.....	3
1. General.....	3
2. Duration of Contract.....	3
3. Entire Agreement.....	3
4. Governing Law .....	3
5. Precedence .....	4
6. Formal Amendments to the Contract .....	5
7. Authority Representatives.....	5
8. Severability.....	5
9. Waiver .....	5
10. Assignment of Contract.....	6
11. Third Party Rights.....	6
12. Transparency.....	6
13. Disclosure of Information .....	6
14. Publicity and Communications with the Media .....	7
15. Change of Control of Contractor .....	7
16. Environmental Requirements.....	8
17. Contractor's Records .....	9
18. Notices .....	9
19. Progress Monitoring, Meetings and Reports .....	9
20. Cyber.....	10
21. Supply of Contractor Deliverables and Quality Assurance .....	10
22. Marking of Contractor Deliverables .....	10
23. Packaging and Labelling (excluding Contractor Deliverables containing Munitions).....	10
24. Plastic Packaging Tax.....	14
25. Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables .....	14
26. Timber and Wood-Derived Products .....	15

27.	Certificate of Conformity .....	16
28.	Access to Contractor's Premises .....	17
29.	Delivery / Collection .....	17
30.	Acceptance.....	18
31.	Rejection and Counterfeit Materiel Rejection: .....	18
32.	Diversion Orders.....	19
33.	Self-to-Self Delivery .....	19
34.	Licences and Intellectual Property .....	20
35.	Third Party Intellectual Property – Rights and Restrictions.....	21
36.	Contract Price.....	24
37.	Payment and Recovery of Sums Due .....	24
38.	Value Added Tax .....	25
39.	Debt Factoring .....	25
40.	Subcontracting and Prompt Payment.....	26
41.	Dispute Resolution.....	26
42.	Termination for Insolvency or Corrupt Gifts Insolvency:.....	26
43.	Termination for Convenience .....	28
44.	Material Breach .....	28
45.	Consequences of Termination.....	29
46.	The project specific DEFCONS that apply to the Contract are: .....	29
47.	The special Conditions that apply to the Contract are: .....	32
48.	The processes that apply to the Contract are:.....	32

## **General Conditions**

### **1. General**

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in the Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their obligations under, the Contract;
  - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their obligations under the Contract;
  - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
  - (4) for so long as the Contract remains in force they shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
  - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or its nominated deputy) authorised in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Form)), to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

### **2. Duration of Contract**

- a. This Framework Agreement comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) , unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.
- b. Call Off Orders can be placed at any point until framework expiry and will continue until completion of all contractual deliverables, including where this exceeds framework expiry.

### **3. Entire Agreement**

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

### **4. Governing Law**

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and Condition 41 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
  - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
    - a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
    - b. Subject to Condition 41(Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
    - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”
  - (2) Clause 41.b shall be amended to read:  
 “In the event that the dispute or claim is not resolved pursuant to clause 41.a the dispute shall be referred to arbitration.  
 Unless otherwise agreed in writing by the Parties, the arbitration and this clause 41.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”
- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor’s place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

**5. Precedence**

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
  - (1) Terms and Conditions of the Framework Agreement Conditions 1 - 45 (and 46 - 49, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order (Call
  - (2) Schedule 2 (Schedule of Requirements) ;
  - (3) The relevant agreed Call Off Order Form
  - (4) the remaining Schedules; and
  - (5) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 41 (Dispute Resolution).

## **6. Formal Amendments to the Contract**

- a. Except as provided in Condition 32 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
  - (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used); and
  - (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
  - (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 or DEFCON 127. Where DEFCON 643 is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643; or
  - (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

### **Changes to the Specification**

- d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract and each relevant agreed Call Off Order Form shall conform in all respects with the Specification.
- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

## **7. Authority Representatives**

- a. Any reference to the Authority in respect of:
  - (1) the giving of consent;
  - (2) the delivering of any Notices; or
  - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.
- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order Form), (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order in accordance with Condition 6 (Formal Amendments to the Contract)

## **8. Severability**

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

## **9. Waiver**

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

## **10. Assignment of Contract**

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

## **11. Third Party Rights**

- a. Save where expressly set out elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

## **12. Transparency**

- a. Notwithstanding any other term of the Contract, including Condition 13 (Disclosure of Information), the Contractor agrees that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.
- b. The Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- c. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in clauses 12.f to 12.j. Where the Authority publishes Transparency Information, it shall redact any Sensitive Information and, where reasonably practicable, consult with the Contractor on the proposed redactions prior to publication.
- d. The Authority shall present information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed.
- e. The parties agree that they will not disclose information in relation to the Contract in contravention of their obligations under data protection legislation. In this clause, "data protection legislation" has the same meaning as in the Data Protection Act 2018.

### **Publishable Performance Information**

- f. The Publishable Performance Information for the purposes of this framework agreement is intended as part of the Call Off Order process.
- g. If Performance measures are required for any Call Off Orders, the conditions shall be detailed within the Call Off Order Form Part 1.

## **13. Disclosure of Information**

- a. Subject to clauses 13.d to 13.i and Condition 12 each Party:
  - (1) shall treat in confidence all Information it receives from the other;
  - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
  - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
  - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
  - (1) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
  - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Subcontract.
- c. The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. A Party shall not be in breach of clauses 13.a, 13.b, 13.f, 13.g and 13.h to the extent that either Party:
  - (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
  - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
  - (3) can show:
    - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

- (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
  - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
  - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract; provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Condition
- f. The Authority may disclose the Information:
- (1) to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
  - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (4) subject to clause 13.g below, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;
  - (5) subject to clause 13.g below, on a confidential basis for the purpose of the exercise of its rights under the Contract; or
  - (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract; and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Condition.
- g. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.
- h. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- i. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- j. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

#### **14. Publicity and Communications with the Media**

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

#### **15. Change of Control of Contractor**

- a. The Contractor shall notify the Representative of the Authority in writing at the address given in clause 15.c:

- (1) as soon as practicable of any intended, planned or actual change in control of the Contractor and/or their First-Tier Sub-contractor; and
  - (2) Immediately on the Contractor being aware of any actual change of control of any Lower-Tier Sub-Contractor.
- b. The Contractor shall include in any such notification any concerns the Contractor may have with the change of control. Such concerns may include but are not limited to potential threats to national security and security of supply. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
  - c. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:  
Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Spruce 3b # 1301  
MOD Abbeywood, Bristol, BS34 8JH  
**and** emailed to: [DefComrclSSM-MergersandAcq@mod.gov.uk](mailto:DefComrclSSM-MergersandAcq@mod.gov.uk)
  - d. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to the Effective Date of Contract. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 calendar days (or as agreed by the parties) of receipt of the Authority's written concerns, for the Authority's consideration.
  - e. To the extent that the Authority considers that it is reasonable to do so, the Authority shall work with the Contractor to seek to resolve the Authority's concerns. The Contractor agrees to answer the Authority's questions or requests for clarification promptly.
  - f. Where the Authority considers, in its absolute discretion, that the risk may be appropriately mitigated, the Contractor shall implement any agreed mitigations promptly and, in any case, within the timescales required by the Authority. Where the Contractor fails to do so, clause 15.g. shall apply.
  - g. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor (and/or request the Contractor to terminate and relevant First-Tier or Lower-Tier Sub-Contractor's contract) within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination, including, but not limited to, taking into account the Contractor's own assessment of the change of control.
  - h. Where the Authority terminates the Contract in accordance with clause 15.g, subject to clause 15.i, the Contractor may request payment for any unavoidable commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. The Authority shall act reasonably when assessing the Contractor's request for payment although the parties agree that the Authority shall retain the sole discretion, acting reasonably, to decide whether to make such requested payment in accordance with clause 15.i.
  - i. Any requests for payment by the Contractor must be submitted promptly and the Contractor shall demonstrate to the reasonable satisfaction of the Authority that such request for payment:
    - (1) Is reasonable and properly chargeable by the Contractor;
    - (2) would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract; and
    - (3) is fully supported by documentary evidence.
  - j. In the event that the Contractor fails to demonstrate any of the conditions set out at 15.i.(1)-(3), the Authority may reject such request for payment.
  - k. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.
  - l. The Contractor shall include provisions equivalent to those set out in this Condition in all relevant sub-contracts

## **16. Environmental Requirements**

The Contractor shall in all their operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental

impacts of their supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

#### **17. Contractor's Records**

- a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
  - (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
  - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
  - (1) the end of the Contract term;
  - (2) the termination of the Contract; or
  - (3) the final payment, whichever occurs latest.

#### **18. Notices**

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

#### **19. Progress Monitoring, Meetings and Reports**

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order, and shall ensure that their Contractor's representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order. The reports shall detail as a minimum:
  - (1) Performance/Delivery of the Contractor Deliverables;
  - (2) Risks and opportunities;
  - (3) Any other information specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order,; and
  - (4) any other information reasonably requested by the Authority.

## **20. Cyber**

- a. Further to DEFCON 658 the Cyber Risk Profile of the Contract is Low, as defined in Def Stan 05-138

### **Supply of Contractor Deliverables**

#### **21. Supply of Contractor Deliverables and Quality Assurance**

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and Call Off Order Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
  - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order in providing the Contractor Deliverables; and
  - (2) discharge their obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
  - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
  - (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
  - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

#### **22. Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order.
- b. Each Asset Subject to Special Controls (ASSC) shall be marked with a UII, to be affixed by way of a 2D data matrix label, in accordance with DEF-STAN 05- 132.
- c. Where the Contract requires a non-ASSC Contractor Deliverable to be marked with a UII, to be affixed by way of a 2D data matrix label, this shall also be in accordance with DEF-STAN 05-132.
- d. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- e. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- f. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

#### **23. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)**

- a. Packaging responsibilities are as follows:
  - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
  - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the authority before proceeding further.
  - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
  - (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
  - (1) The Contractor shall provide Packaging which:
    - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
    - (b) is labelled to enable the contents to be identified without need to breach the package; and
    - (c) is compliant with statutory requirements and this Condition.

- (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
- (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
  - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
  - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
- (1) The Health and Safety At Work Act 1974 (as amended);
  - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
  - (3) The REACH Regulations 2007 (as amended); and
  - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
  - (2) The Air Navigation (Amendment) Order 2019.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Condition 25 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:
- (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
    - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:  
 DES LSOC SpSvcs--SptEng-Pkg1  
 MOD Abbey Wood  
 Bristol, BS34 8JH  
 Tel. +44(0)30679-35353  
[DELSOC-SpSvcs-SptEng-Pkg-Multi@mod.gov.uk](mailto:DELSOC-SpSvcs-SptEng-Pkg-Multi@mod.gov.uk)
    - (b) The MPAS Documentation is also available on the DStan website.
  - (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).
  - (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
  - (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
  - (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract.
- When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
- (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
  - (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 23.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

- (8) The documents supplied under clause 23.f.(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
- g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
- (1) If the Contractor or their Subcontractor is the PDA they shall:
    - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order, prepare the required package design in accordance with clause 23.f.
    - (b) here the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
      - i. a list of all SPIS which have been prepared or revised against the Contract; and
      - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
    - (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 23.g.(1)(b).
  - (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
  - (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g.(1)(b).
  - (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 23.g.(1)(a) and 23.g.(1)(b).
- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 or equivalent condition, as appropriate.
- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
- (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
    - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
    - (b) Each consignment package shall be marked with details as follows:
      - i. name and address of consignor; ii. name and address of consignee (as stated in the Contract or order); iii. destination where it differs from the consignee's address, normally either:
        - (i). delivery destination / address; or
        - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
      - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
        - (i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 23.l.
  - (2) If the Call Off Order specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables to state the following:
    - (a) description of the Contractor Deliverable;
    - (b) the full thirteen digit NATO Stock Number (NSN);
    - (c) the PPQ;
    - (d) maker's part / catalogue, serial and / or batch number, as appropriate;
    - (e) the Contract and order number when applicable;
    - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages; (g) shelf life of item where applicable;
    - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);

- (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
  - (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
  - (1) the full 13-digit NSN;
  - (2) denomination of quantity (D of Q);
  - (3) actual quantity (quantity in package);
  - (4) manufacturer's serial number and / or batch number, if one has been allocated; and (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order
- l. The requirements for the consignment of aggregated packages are as follows:
  - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
  - (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
    - (a) class group number;
    - (b) name and address of consignor;
    - (c) name and address of consignee (as stated on the Contract or order);
    - (d) destination if it differs from the consignee's address, normally either:
      - i. delivery destination / address; or
      - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
    - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
    - (f) the CP&F-generated shipping label; and
    - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 26 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
  - o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of

- Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStand internet site at: <https://www.dstand.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
  - u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.
- 24. Plastic Packaging Tax**
- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
  - b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
  - c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
  - d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
  - e. In accordance with Condition 17 the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
  - f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
    - (1) confirmation of the tax status of any Plastic Packaging Component;
    - (2) documents to confirm that PPT has been properly accounted for;
    - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
    - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
  - g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 24.f above is accurate.
  - h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
  - i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.
- 25. Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables**
- a. Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
  - b. The Contractor shall provide to the Authority:
    - (1) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
    - (2) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
    - (3) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and/or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the Contractor, to allow safe use of the Article including, as a minimum, the name of that Substance.
  - c. For Substances, Mixtures or Articles that meet the criteria list in clause 25.b above:
    - (1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety information and forward it to the Authority and to the address listed in clause 25.i below; and

- (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. The Contractor shall provide to the Authority a completed DEFFORM 68 (Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order
- e. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details in DEFFORM 68 of:
  - (1) activity; and
  - (2) the substance and form (including any isotope).
- g. If the Substances, Mixtures or Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details in DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 25.b.(1) and 25.c.(1), any information arising from the provisions of clauses 25.f and 25.g and the completed DEFFORM 68, shall be sent directly to the Authority's Point of Contact as specified in the Schedule 3 and/or the relevant agreed Call Off Order as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order
- i. So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
  - (1) Hard copies to be sent to:  
Hazardous Stores Information System (HSIS)  
Spruce 2C, #1260,  
MOD Abbey Wood (South)  
Bristol BS34 8JH
  - (2) Emails to be sent to  
[DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk](mailto:DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk)
- j. SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.
- k. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substances, Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under Condition 44 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 44.
- l. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

**26. Timber and Wood-Derived Products**

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:
  - (1) shall comply with the Contract Specification; and
  - (2) must originate either:
    - (a) from a Legal and Sustainable source; or
    - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of clause 26.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
  - (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
  - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
  - (3) safeguarding the basic labour rights and health and safety of forest workers.

- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 26.a or 26.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under clause 26.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 26.a or 26.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).
- g. Notwithstanding clause 26.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
  - (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
  - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 26.a or 26.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
  - (1) verify the forest source of the timber or wood; and
  - (2) assess whether the source meets the relevant criteria of clause 26.b.
- i. The statistical reporting requirement at clause 26.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).
- j. The Contractor shall provide to the Authority, a completed DEFFORM 691A (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed DEFFORM 691As (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).
- k. The DEFFORM 691A (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract).
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
  - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at <https://www.forestryengland.uk/>) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
  - (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

**27. Certificate of Conformity**

- a. Where required in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.

- c. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).
- d. The Information provided on the CofC shall include:
  - (1) Contractor's name and address;
  - (2) Contractor unique CofC number;
  - (3) Contract number and where applicable Contract amendment number and/or CP&F (Contracting, Purchasing and Finance) Purchase Order Number;
  - (4) Details of any approved concessions (clearly linked to the relevant item);
  - (5) Acquirer name and organisation;
  - (6) Delivery address;
  - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
  - (8) Line item numbers when there is more than one line item on the CofC;
  - (9) Description of Contractor Deliverable, including part number, specification and configuration status;
  - (10) NATO Stock Number (NSN) (where allocated);
  - (11) identification marks, batch and serial numbers in accordance with the Specification;
  - (12) Quantities;
  - (13) A signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.
  - (14) Exceptions or additions to the above are to be documented.
- e. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant Subcontract the requirement for the Information called for at clause 27.d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

## **28. Access to Contractor's Premises**

- a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 28.a are included in their Subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

## **29. Delivery / Collection**

- a. Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
  - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
  - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order);
  - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order, a DEFFORM 129J in accordance with the instructions;
  - (4) be responsible for all costs of Delivery; and
  - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
  - (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
  - (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order,;
  - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3

(Contract Data Sheet)) and/or the relevant agreed Call Off Order , a DEFFORM 129J in accordance with the instructions;

- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) and/or the relevant agreed Call Off Order by the Delivery Date between the hours agreed by the Parties; and
  - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 29.b; or (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 29.c.

### **30. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in each relevant agreed Call Off Order. If no acceptance procedure is so specified acceptance shall occur when either:

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
- (2) the time limit in which to reject the Contractor Deliverables defined in clause 31.b has elapsed.

### **31. Rejection and Counterfeit Materiel Rejection:**

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

b. Rejection of any of the Contractor Deliverables under clause 31.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order., or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

#### **Counterfeit Materiel:**

c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:

- (1) notify the Contractor in writing of its suspicion and reasons therefore;
- (2) where reasonably practicable, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
- (3) at its discretion, provide the Contractor with a sample of the Contractor Deliverable or consignment for validation or testing purposes by the Contractor (at the Contractor's own risk and expense);
- (4) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 31.c.(2).(i) or the provision of a sample at 31.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
- (5) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel.

d. Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 31.a and 31.b (Rejection), and provide written notification to the Contractor of the rejection.

e. In addition to its rights under 31.a and 31.b (Rejection), where the Authority has determined that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:

- (1) retain any Counterfeit Materiel; and/or
- (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment; and such retention shall not constitute acceptance under Condition 30 (Acceptance).

f. Where the Authority intends to exercise its rights under clause 31.e the Contractor may, subject to the agreement of the Authority (and at the Contractor's own risk and expense and subject to any reasonable controls and timeframe agreed), arrange, for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
- (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is reasonably satisfied does not contain Counterfeit Materiel.

g. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 31.e, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 31.f but the Contractor fails to do so within the period agreed and subject to clause 31.k, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
- (2) to pass it to a relevant investigatory or regulatory authority;
- (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall, at the discretion of the Authority, be shared with the Contractor; and/or
- (4) to recover the appropriate, attributable, and reasonable costs incurred by the Authority in respect of testing, storage, access, and/or disposal of it from the Contractor; and exercise of the rights granted at clause 31.g (1) to 31.g (3) shall not constitute acceptance under condition 30 (Acceptance)

h. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 31.g.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 31.g.(4) then the balance shall accrue to the Contractor.

i. The Authority shall not use a retained Contractor Deliverable or consignment other than as permitted in clauses 31.c – 31.k.

j. The Authority may report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

k. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 31.c – 31.k except:

- (1) in relation to the balance that may accrue to the Contractor in accordance with clause 31.h; or
- (2) where it has been determined in accordance with Condition 41 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 31.c.(5). In such circumstances the Authority shall reimburse the Contractor's reasonable costs of complying with clause 31.c.

### **32. Diversion Orders**

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

b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

c. The Authority reserves the right to cancel the Diversion Order.

d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

### **33. Self-to-Self Delivery**

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

### 34. Licences and Intellectual Property

#### Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the Contractor is responsibility for applying for and maintaining that licence
- b. Without prejudice to the HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation, and other reasonable assistance to obtain Licences from the UK or a foreign government for the performance of the Contract.
- c. The Contractor shall consult the Authority as soon as reasonably practicable if a Licence is required from a foreign government. Where the Contractor is the applicant for obtaining Licences they shall ensure that when Restrictions apply to all or part of any Contractor Deliverables (which for the purposes of this Condition) shall also include information, technical data, software and Services) unless otherwise agreed with the Authority, they shall identify in the application:
  - (1) the end user as: The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereinafter "UK MOD"); and
  - (2) the end use as: For the Purposes of UK MOD; and
  - (3) include in the submission for the Licence a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- d. The Contractor shall take expeditious action to arrange the application for the foreign Licences required to import or export any Materiel not supplied by or on behalf of the Authority or perform any Services for which a Licence is required by a foreign government; this includes, but is not limited to, compliance with the ITAR, EAR, FMS and any applicable UK-US agreements. The Contractor shall include the dependencies for the Licence application, grant, and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where a risk management plan is not required under the Contract the Contractor shall inform the Authority's representative accordingly.
- e. During the term of the Contract and for up to two years after Contract completion, the Authority may make a written request to the Contractor to seek a variation to the conditions of a foreign Licence to enable the Authority to re-export or re-transfer a licenced or authorised Materiel from the UK and/or to a non-licenced third party. If the Authority makes such a request, it will consult the Contractor before making a determination on which party is best placed to seek a variation. Where the Contractor is best placed to seek a variation:
  - (1) the Contractor shall, expeditiously file an application to seek a variation of the applicable Licence in accordance with the procedures of the foreign government or raise their objection to the request. Where the Contractor has an objection to the variation request, the Parties shall meet within 5 Business Days to resolve the issue; should they fail to do so, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export or import control subject matter experts; and
  - (2) the Authority shall provide sufficient information, certification, documentation, and other reasonable assistance necessary to support the application to seek a variation.
- f. Where the Authority determines that it is best placed to make such a request for variation, the Contractor shall provide sufficient information, certification, documentation, and other reasonable assistance necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes clause 34.e or 34.f the Authority will pay the Contractor a fair and reasonable price for this service based on the cost of providing it.
- h. The Contractor shall use all reasonable endeavours to incorporate in each relevant Subcontract equivalent terms regarding foreign export and/or import controls to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall promptly report that fact and the circumstances to the Authority.
- i. The Authority shall use reasonable endeavours to identify any Restrictions that apply to Materiel to be provided to the Contractor as Government Furnished Assets.
- j. Where the Authority is to provide Materiel necessary to enable the Contractor to perform the Contract, or in respect of which the Services are to be provided, and that is subject to Restrictions the Authority shall provide a completed DEFFORM 528 (and a copy of any applicable Licence, where available) to the Contractor as soon as reasonably practicable and no later than 30 days prior to the delivery of such Materiel to the Contractor. If the DEFFORM 528 provided is found to be inaccurate or incomplete the Authority shall deliver a new DEFFORM 528 as soon as reasonably practicable.

- k. Where Restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clause 34.j or any of the information provided by the Authority in any DEFFORM 528 is inaccurate or incomplete the Parties shall promptly agree on the best course of action and implement it to mitigate the impact of the incomplete or inaccurate disclosure under the terms of Condition 6 (Formal Amendments to the Contract), or as may otherwise be provided by the Contract. If there is no alternative or appropriate mitigation available, the Authority may terminate the Contract in accordance with Condition 43 (Termination for Convenience), as appropriate and as referenced in the Contract. Providing the Contractor has taken such steps as are reasonable to mitigate the impact the Contractor shall be relieved of their obligation to perform those elements of the Contract affected by the Restrictions or provision of incorrect or incomplete information.
- l. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to any foreign Licence including those that impose or will impose Restrictions. During the term of the Contract the Contractor shall inform the Authority of any foreign Licence and/or any Restrictions not already disclosed at the Effective Date of Contract or relevant amendment. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 35 (Third Party Intellectual Property – Rights and Restrictions).
- m. The Contractor shall notify the Authority of all, or any part of the Contractor Deliverables identified within clause 34.l, by submitting a DEFFORM 528 or other mutually agreed alternative format as soon as reasonably practicable and no less than 30 days prior to delivery of the Contractor Deliverables. Such notification shall include an update on the validity of all previous information submitted and shall include any Restrictions (not already disclosed to the Authority) notified to the Contractor by any of their Subcontractors, suppliers, or other third parties. The Contractor, within 10 Business Days (or such longer period as shall have been agreed in writing by the Parties) of such notification shall submit a proposal to the Authority outlining actions to mitigate the impact of such Restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal of or modification to the Restrictions, or to obtain appropriate authorisations from the relevant foreign government. The Authority shall inform the Contractor within 10 Business Days (or such longer period as shall have been agreed in writing by the Parties) of receipt of the proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with Condition 6 (Formal Amendments to the Contract) or as otherwise provided by the Contract to implement the proposal.
- n. If the Contractor is unable to perform their obligations under the Contract due to the Restrictions notified in accordance with clauses 34.l and 34.m and the Restrictions are not capable of being removed, modified, or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion amend the Contract in accordance with Condition 6 (Formal Amendments to the Contract) or as otherwise provided by the Contract or terminate the Contract. Except where clause 34.o applies, termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and those due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, shall use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with Condition 41 (Dispute Resolution). Providing the Contractor has taken such steps as are reasonable to mitigate the impact the Contractor shall be relieved of their obligation to perform those elements of the Contract directly affected by the Restrictions or provision of incorrect or incomplete information.
- o. Where the Contractor knew or ought reasonably to have known that the Contract Deliverables were subjected to the Restrictions notified in accordance with clauses 34.l and 34.m, either at the Effective Date of Contract or at the date of submission of the most recent previous DEFFORM 528 to the Authority in accordance with clause 34.m, and failed to notify the Authority or the information disclosed was inaccurate or incomplete, the termination of the Contract will be in accordance with Condition 44 (Material Breach) and the provisions of clause 34.n with respect to termination will not apply.
- p. For a period of up to 2 years from the completion of the Contract, and in response to a specific written request from the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any change to the Restrictions applicable to any Materiel provided under the Contract by issuing an updated DEFFORM 528 to the Authority.

### **35. Third Party Intellectual Property – Rights and Restrictions**

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the

Contract or to use by the Authority of anything required to be done or delivered under the Contract;

- (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
- (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

clause 35.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

b. If the Information required under clause 35.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.

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

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 35.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

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

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

g. If, under clause 35.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

- a. if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- b. in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

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

- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
  - (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
  - (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 35.a.
- k. Where authorisation is given by the Authority under clause 35.e, 35.f or 35.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
  - (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
  - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
  - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
  - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
  - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents and employees against liability, including costs as a result of:
  - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
  - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
  - (1) clauses 35.a – 35.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
  - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
  - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
  - (4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
  - (5) following a notification under clause 35.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made

- or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
- (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in Condition 35 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

**Notification of Intellectual Property Rights (IPR) Restrictions**

- r. Where any of the conditions listed below (1 to 3) have been added to the Conditions of the Contract as project specific DEFCONs at clause 46, or where required by clauses 35.a. - 35.q., the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in DEFFORM 711 (Notification of Intellectual Property Rights (IPR) Restrictions).
- (1) DEFCON 15 - including notification of any self-standing background Intellectual Property;
  - (2) DEFCON 90 - including copyright material supplied under clause 5;
  - (3) DEFCON 91 - limitations of Deliverable Software under clause 3b.
- s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in DEFFORM 711.
- t. Any amendment to DEFFORM 711 shall be made in accordance with Condition 7.

**Pricing and Payment**

**36. Contract Price**

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet) and/or the relevant agreed Call Off Order.
- b. Subject to clause 36.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

**37. Payment and Recovery of Sums Due**

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 36.a, the Authority will consider and verify that invoice without undue delay.
- c. The Authority shall pay the Contractor any sums due to be paid under the invoice before the end of the period of 30 days beginning with the day on which a valid and undisputed invoice is received by the Authority in respect of the sum or, if later, the day on which the payment falls due in accordance with the invoice.
- d. Where the Authority fails to comply with clause 37.b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 37.c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the

Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

### **38. Value Added Tax**

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 41 (Dispute Resolution).
- g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 38.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

### **39. Debt Factoring**

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 10 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 39 shall be subject to:
  - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 37.f;
  - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (3) the Authority receiving notification under both clauses 39.b and 39.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 39.a, the Contractor shall notify the

Authority in writing of the assignment and the date upon which the assignment becomes effective.

- c. The Contractor shall ensure that the Assignee:
  - (1) is made aware of the Authority's continuing rights under clauses 39.a.(1) and 39.a.(2); and
  - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 39.a.(1) and 39.a.(2).
- d. The provisions of Condition 37 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

#### **40. Subcontracting and Prompt Payment**

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of their obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a Subcontract, they shall cause a term to be included in the Subcontract:
  - (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
  - (2) providing that the Contractor shall pay the Subcontractor any sums due under such the Subcontract no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
  - (3) providing that where the Contractor fails to comply with clause 40.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 40.b.(2) after a reasonable time has passed; and
  - (4) requiring the Subcontractor to include in any Subcontract which it awards, provisions having the same effect as clauses 40.b.(1) to 40.b.(3) and to procure that the counterparty to that contract include provisions having the same effect as clauses 40.b.(1) to 40.b.(4).
- c. The Contractor shall not agree with the Subcontractor a payment date for a valid and undisputed invoice of more than 30 days.

#### **Termination**

##### **41. Dispute Resolution**

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause 41.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 41.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

##### **42. Termination for Insolvency or Corrupt Gifts Insolvency:**

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or

- (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
    - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
    - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
  - (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (8) (8) the court making an award of sequestration in relation to the Contractor's estates.
- Where the Contractor is a company registered in England:
- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (10) the court making an administration order in relation to the company; or
  - (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (12) the company passing a resolution that the company shall be wound-up; or
  - (13) the court making an order that the company shall be wound-up; or
  - (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 42.a.(9) to 42.a.(14) inclusive above.

- b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

**Corrupt Gifts:**

- c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):
  - (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
    - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
    - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
  - (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
  - (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
  - (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
  - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition, the Authority shall:
  - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
  - (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
    - (a) requiring the Contractor to procure the termination of a Subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
    - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

#### **43. Termination for Convenience**

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)) and/or the relevant agreed Call Off Order . Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
  - (1) not start work on any element of the Contractor Deliverables not yet started;
  - (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
  - (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
  - (4) terminate on the best possible terms any Subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 43.b.(2) and 43.b.(3) of this Condition.
- c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 43.b):
  - (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
    - (a) in the possession of the Contractor at the date of termination; and
    - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
  - (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
    - (a) all such unused and undamaged materiel; and
    - (b) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
  - (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to clause 43.e below and to the Contractor's compliance with any direction given by the Authority in clause 43.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
  - (1) the Contractor taking all reasonable steps to mitigate such loss; and
  - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- f. The Contractor shall include in any Subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the Subcontract under the terms of clauses 43.a to 43.e except that:
  - (1) the name of the Contractor shall be substituted for the Authority except in clause 43.c.(1);
  - (2) the notice period for termination shall be as specified in the Subcontract, or if no period is specified twenty (20) Business Days; and
  - (3) the Contractor's right to terminate the Subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 43.
- g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

#### **44. Material Breach**

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 44.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

- (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
- (2) obtaining the Contractor Deliverable in substitution from another supplier.

**45. Consequences of Termination**

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

**Additional Conditions**

**46. The project specific DEFCONS that apply to the Contract are:**

DEFCON 5J (Edn/18/11/16) – Unique Identifiers

DEFCON 14 (Edn 11/22) - Inventions And Designs Crown Rights And Ownership Of Patents And Registered Designs

DEFCON 15 (Edn 06/21) – Design Rights And Rights To Use Design Information

Note: DEFFORM 711 can be found at the [Knowledge in Defence \(KiD\)](#) website.

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

DEFCON 21 (Edn 06/21) – Retention of Records

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

DEFCON 76 (Edn 11/22) – Contractor's Personnel At Government Establishments

DEFCON 82 (Edn 06/21) - Special Procedure For Initial Spares

DEFCON 90 (Edn 06/21) – Copyright

Note: This DEFCON applies to non-technical information, including but not limited to any Progress Reports/Meeting Minutes. DEFFORM 711 can be found at the [Knowledge in Defence \(KiD\)](#) website.

DEFCON 113 (Edn 02/17) – Diversion Orders

DEFCON 117 (Edn 09/24) - Supply of Information for NATO Codification and Defence Inventory Introduction.

DEFCON 129 (Edn. 02/22) – Packaging for Articles other than Munitions

DEFCON 129J (Edn 11/16) – The Use of The Electronic Business Delivery Form

DEFCON 501 (Edn 10/21) – Definitions And Interpretations

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

DEFCON 507 (Edn 07/21) – Delivery

DEFCON 513 (Edn 07/24) – Value Added Tax

Note: This DEFCON applies when Tax Liability is £4M or above

DEFCON 514 (Edn 08/15) – Material Breach

DEFCON 515 (Edn 06/21) – Bankruptcy And Insolvency

DEFCON 516 (Edn 04/12) – Equality

DEFCON 518 (Edn 02/17) - Transfer

DEFCON 520 (Edn 10/23) – Corrupt Gifts And Payments Of Commission

DEFCON 522 (Edn 11/21) – Payment And Recovery Of Sums Due

DEFCON 524 (Edn 12/21) - Rejection

DEFCON 524A (Edn 12/22) – Counterfeit Materiel

DEFCON 525 (Edn. 10/98) – Acceptance

DEFCON 526 (Edn. 08/02) – Notices

DEFCON 527 (Edn 09/97) – Waiver

DEFCON 528 (Edn. 10/24) – Import and Export Licences

DEFCON 529 (Edn. 09/97) – Law (English)

DEFCON 530 (Edn. 12/14) – Dispute Resolution

DEFCON 531 (Edn. 09/21) – Disclosure of Information

DEFCON 534 (Edn. 02/25) – Subcontracting and Prompt Payment

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

DEFCON 538 (Edn. 06/02) – Severability

DEFCON 539 (Edn. 02/25) - Transparency

DEFCON 540 (Edn. 05/23) – Conflicts of Interest

DEFCON 550 (Edn 02/14) - Child Labour and Employment Law

DEFCON 565 (07/23) – Supply Chain Resilience and Risk Awareness

Note: DEFFORM 565 can be found at the [Knowledge in Defence \(KiD\)](#) website. Where there is a change to the Contractor's supply chain at Tier 1 or Tier 2, the Contractor shall inform the Authority at the earliest opportunity, providing details of the change, and impact to qualification of the product utilising DEFFORM 565.

DEFCON 602A (Edn. 04/23) – Quality Assurance (with Deliverable Quality Plan)

Note: This DEFCON only applies if included in the Call Off Order Form.

DEFCON 602B (Edn 12/06) – Quality Assurance (Without Deliverable Quality Plan)

Note: This DEFCON only applies if included in the Call Off Order Form

DEFCON 604 (Edn. 06/14) - Progress Reports

DEFCON 605 (Edn 12/17) – Financial Reports

Note: DEFFORM 647 can be found at the [Knowledge in Defence \(KiD\)](#) website.

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

DEFCON 608 (Edn. 07/21) – Access and Facilities To Be Provided By The Contractor

DEFCON 609 (Edn.07/21) - Contractor's Records

DEFCON 611 (Edn 12/22) – Issued Property

Note: DEFFORM 316 can be found at the [Knowledge in Defence \(KiD\)](#) website.

DEFCON 612 (Edn. 06/21) – Loss Of Or Damage To The Articles

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

DEFCON 621A (Edn 10/04) – Transport (If the Authority is Responsible for Transport)

Note: This condition will only apply if included in the Call Off Order Form.

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

Note: This condition will only apply if included in the Call Off Order Form.

DEFCON 624 (Edn 08/22) – Use of Asbestos

DEFCON 627 (Edn. 04/24) – Quality Assurance – Requirement for a Certificate of Conformity

Note: DEFCON only applies if included in the Call Off Order Form.

DEFCON 630 (Edn 02/18) – Framework Agreements

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

DEFCON 642 (Edn. 07/21) – Progress Meetings

Note: This condition will only apply if included in the Call Off Order Form.

DEFCON 644 (10/24) – Marking of Articles

DEFCON 645 (Edn 12/21) – Export Potential

Note: MOD Form 1686 and DEFFORM 528 can be found at the [Knowledge in Defence \(KiD\)](#) website.

DEFCON 646 (Edn. 10/98) – Law and Jurisdiction (Foreign Suppliers)

Note: This DEFCON only applies if included in the Call Off Order Form.

DEFCON 647 (Edn 03/24) - Financial Management Information

Note: Annex A can be found at the [Knowledge in Defence \(KiD\)](#) website.

DEFCON 649 (Edn 12/21) – Vesting

DEFCON 656A (Edn 08/16) – Termination for Convenience – Under £5M

DEFCON 656B (Edn 08/16) – Termination for Convenience – Over £5M

DEFCON 658 (Edn 10/22) – Cyber

Note: for the purposes of DEFCON 658 - Cyber, the Cyber Risk Profile for this Framework has been assessed as 'Low', the Supplier Assurance Questionnaire is attached to the terms and condition of this contract. The Risk Assessment Reference is: RAR- 240808A10. This assessment may change for each Call Off Order.

DEFCON 659A – Security Measures

Note: This DEFCON only applies if included in the Call Off Order Form.

DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements

DEFCON 670 (Edn 11/17) - Tax Compliance

DEFCON 671 (Edn 10/22) – Plastic Packaging Tax

DEFCON 675 (Edn 03/21) - Advertising Subcontracts (Defence and Security Public Contracts

Regulations 2011 only)

DEFCON 681 (Edn. 06/02) – Decoupling Clause – Subcontracting with the Crown

DEFCON 691 (Edn. 03/15) – Timber and Wood – Derived Products

DEFCON 694 (Edn 07/21) – Accounting For Property Of The Authority

DEFCON 697 (Edn 11/22) – Contractors on Deployed Operations

**47. The special Conditions that apply to the Contract are:**

**Insurance**

- a. The Contractor must hold the minimum level of insurance required by law for the duration of the contract.
- b. In the United Kingdom the current statutory insurances are Employers Liability Insurance and Motor Third Party Liability Insurance.
- c. Where a Contractor seeks to limit their financial liability under Head of Loss DEFCON 76 – Contractor’s Personnel at Government Establishments the contractor must confirm the existence of, scope and level of any relevant Public Liability insurance, Products Liability Insurance and / or Property Damage Insurance held by the contractor.
- d. Where the Contractor intends to mitigate against the risks associated with the Heads of Loss, the contractor must provide details of any insurance provisions they intend to use.

**Support**

- a. A condition of joining the Framework Agreement, is that the Contractor is willing for product transition to In-service and support be provided through the Authority’s Contract for Protected and Modified Civilian Profile Vehicles Support Arrangement, currently in the process of being competed. Details of this procurement are available through the Defence Sourcing Portal: <https://contracts.mod.uk/esop/guest/go/opportunity/detail?opportunityId=58123>
- b. The Contractor shall engage with the Contractor for the PaMCPV Support Arrangement for the supply of information upon the award of any call-off orders. The Contractor must be prepared to provide information to support the PaMCPV Support Arrangement Contractor where applicable.

**48. The processes that apply to the Contract are:**

**Framework Call Off Order Process**

- a. The Authority’s commercial representative shall issue a Request for Proposal (RfP) through a Part 1 Draft Call Off Form (Schedule 5). Following the issue of the Draft Part 1, Contractors will have 20 Working Days (unless specified otherwise within the Draft Call Off Form) to return their completed Part 2 of the Draft Call Off Form.
- b. Each Draft Call Off Form shall detail as a minimum:
  - (1) The Statement of Requirement (SoR)
  - (2) Any additional terms and conditions that require acceptance
  - (3) The sequence and timescales for the Requirement
  - (4) The Call off Order Evaluation Criteria
  - (5) Acceptance Procedure
  - (6) DEFFORM 539B - Publishable Performance Information - Key Performance Indicator Data Report

- c. Where applicable, each Call Off Order shall require Contractors to supply the following to the Authority as a minimum:
- (7) Project Management Plan
  - (8) Quality Management Plan
  - (9) Safety Management Plan
  - (10) DEFFORM 68 - Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement by the Contractor
  - (11) DEFFORM 691A - Timber and Wood Derived Products
  - (12) DEFFORM 711 - Notification of Intellectual Property Rights (IPR) Restrictions
  - (13) DEFFORM 315 - Contract Data Requirement
  - (14) DEFFORM 528 - Import and Export Information
  - (15) DEFFORM 177 - Design Rights and Patents Sub Con Agreement
  - (16) DEFFORM 565 - Supply Chain Resilience Performance Tool (SCRIPT)
  - (17) Modern Slavery Assessment Tool
  - (18) DEFFORM 647 - Financial Management Information
  - (19) Statement Relating to Good Standing
  - (20) Confidentiality Agreement
  - (21) DEFFORM 82 - Spares

This list is not exhaustive. Contractors may be required to provide additional information/documentation as specified at each Call Off Order.

The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the [Knowledge in Defence \(KiD\)](#) website.

#### **Call Off Proposal Evaluation**

- d. Upon receipt of the Contractors' Part 2, the Authority shall evaluate the proposal in accordance with the specified evaluation criteria within the Call Off Order Form. Once evaluated, a Tender Evaluation Panel (TEP) shall be chaired to validate the successful bid(s).
- e. The stakeholders shall evaluate their specific aspects of the tender in isolation before the Tender Evaluation Panel (TEP) are convened. The Evaluators and TEP shall comprise of Suitably Qualified and Experienced Personnel (SQEP) from within Defence Equipment & Support, Specialist Vehicles & Uncrewed Land Systems (SVULS) team.
- f. All Call Off Orders will be awarded on a Most Advantageous Tender basis unless specified otherwise.
- g. The TEP has the final decision on the outcome of the evaluation process. Once the outcome has been ratified, those involved in the RfP process will be informed of the decision and a Call Off Order Offer/Acceptance (Part 3) issued to the winner. A formal standstill period shall not apply to the award of each call off order.
- h. Unsuccessful tenderers will be notified of the award decision and the scores the submitted proposal received at evaluation. Detailed written feedback will not be provided unless requested by the Contractor.
- i. Following award of the call-off order, a Kick Off meeting shall be held. To note, representatives from the PaMCPV Support Arrangement may be involved in the meeting where support is being discussed. For the avoidance of doubt, they shall not be involved in discussions around commercially sensitive information.
- j. The winning tenderer will be expected to deliver the requirement in accordance with the Call Off Order Form. Upon completion of the order, the Contractor will be expected to complete Part 4 of the Call Off Order Form.

#### **Framework Call Off Conditions**

- k. To note, no Minimum Order Quantities (MOQ) shall apply to Call Off Order Requirements.
- l. Authority reserves the right to make changes to the Draft Part 1 following issue to Contractors under the Framework Agreement.

- m. The Contractor shall not commence any work pertaining to a Call Off Order prior to the receipt of formal, written authorisation of the Call Off Order evidenced by the signature and dating of Part 3 of the Call Off Order Form by the Authority's Project Officer and Commercial Officer.
- n. Unless specifically authorised in writing in advance by the Authority's Commercial Officer:
- o. any work and/or services undertaken prior to the receipt of formal authorisation of a Call Off Order shall be at the Contractor's own risk; and
- p. the Authority will not pay the Contractor for any work and/or services completed in advance of an authorised Call Off Order.
- q. In addition to the Authority's rights of termination under other Conditions, the Authority may terminate any Call Off Order in accordance with DEFCON 656B (Termination for Convenience) and the Authority may require the Contractor to furnish a report setting out the work done to the date of termination and the work outstanding under the Call Off Order.
- r. The Authority reserves the right to fulfil procurement of the requirement from several Contractors where time is of the essence.
- s. Where no Proposals submitted by the Contractors meet the Authority's requirement in its entirety, The Authority reserves the right to make changes to the specification and/or negotiate with the Contractors that had submitted a Part 1 Proposal.
- t. When requirements/products/bids pass evaluation, the Authority shall store the compliant bid on an internal database. In the event that a Call Off Order is for a requirement which has already been competed under the framework, the Contractors will be invited to opt in to resubmitting their compliant bid. The contractor will be required to notify of any changes to their bid. If a bid is resubmitted without change, the Contractor accepts that the bid will not be revaluated and the scores from the previous evaluation will stand.
- u. If a Proposal does not meet the requirement during evaluation and fails to qualify, it will not be added to the database of compliant bids. However, these Proposals can be resubmitted for future requirements in response to a new RfP.

**Contract 711646450 for the Supply of Protected and Modified Civilian Profiled Vehicles (PaMCPV) Framework.**

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

Name, Title and Company Position	
Signature	
Date	

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

Name, Title and Company Position	
Signature	
Date	