



Ministry  
of Defence

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Your Reference:

Our Reference:  
P2G/0452

Date: 1<sup>st</sup> April 2015

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Dear Sirs

**Invitation To Tender (ITT) Reference No. P2G/0452 – Manufacture of Puma MK2 Aircraft Covers**

1. You are invited to tender for the Manufacture of Puma MK2 Aircraft Covers competition in accordance with the attached documentation.
2. The requirement is for the Manufacture of Puma Aircraft Covers in accordance with the Statement of Requirement at Schedule 2 Annex B to the Terms and Conditions of Contract
3. Funding was approved on 21<sup>st</sup> November 2014 and the budget is in the region of £92,000.00 including VAT.
4. The anticipated date for the contract award decision is Wednesday 15<sup>th</sup> July 2015, please note that this is an indicative date and may change.
5. You must submit your Tender to arrive no later than 1200 hrs on Monday 15<sup>th</sup> June 2015. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority.

Yours sincerely

Miss VLJ Meaden

Enclosures

- 1 Invitation to Tender Defform 47 (including Annex A and Annex A Appendix 1)
- 2 Contract Terms and Conditions (including Schedule 1 – Definitions of Contract, Schedule 2 – Schedule of Requirements, Schedule 2 – Annex A, Schedule 2 – Annex B, Schedule 2 – Annex C,

Schedule 3 – Contract Data Sheet, Schedule 3 – Annex A, Schedule 4 – Contract Change Process Procedure, Schedule 5 – Export Licence, Schedule 6 – Hazardous Articles, Materials or Substances, Schedule 7 – Timber and Wood derived products supplied under the contract, Schedule 8 – Acceptance Procedure, Schedule 9 – Contractors Commercially Sensitive Information)

3 Evaluation Criteria (including Appendix 1 – Technical Evaluation Criteria and Evaluation Matrix, Appendix 2 – Commercial Evaluation Criteria, Appendix 3 – Financial Evaluation Criteria, Appendix 4 – Overall Score

4 Special Notices and Instruction

5 Defform 28 – Returns Label

6 Defform 30 – Insert Ref if required

## List of Suppliers Invited to Submit a Tender for ITT No. P2G/0452

Supplier Name	Supplier Address and Phone No	Supplier Point of Contact
Air Covers Ltd	Air Covers Limited, Redbook View, Redbrook, Whitchurch, Shropshire, SY13 3AD	John Pattinson
Air and Ground Aviation Ltd	Air and Ground Aviation Ltd, Aviation House, London Road, Shirleywich, Staffordshire, ST18 0PN	Ian Dodds
Jacon Ltd	Jacon Ltd, Unit 1 Brickfields Industrial Estate, Gillingham, Dorset, SP8 4LT	Katy Tarn
Flexitec Structures Ltd	Flexitec Structures Ltd, 372 Brook Lane, Sarisbury Green, Southampton, SO13 7ZA	David Banks
Ramp Industries Ltd	Ramp Industries Ltd, 1-3 Garrett Road, Yeovil, Somerset, BA20 2JT	Mervyn Ham
Ridgeway Components Ltd	Ridgeway Components Ltd, Unit 5 Prosperity Way, Middlewich, Cheshire, GW10 0GD	Sheelagh Tyler
Seymour Manufacturing International Ltd	Seymour Manufacturing International Ltd, Sutton Hall, Sutton Maddock, Shifnal, Shropshire, TF11 9NQ	David Banks
Stuart Canvas Ltd	Stuart Canvas Ltd, Unit 6 Hardwick Grange, Warrington, Cheshire, WA1 4RF	Craig Groves

## **Invitation To Tender**

**For**

**P2G/0452 – Manufacture of Puma MK2 Puma Aircraft  
Covers**

## Contents

This invitation consists of the following documentation:

DEFFORM 47 – Invitation to Tender. The DEFFORM 47 sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:

- Section A – Introduction Page 3
  - Definitions
  - Purpose
  - ITT Documentation and ITT Material
  - Tender Expenses
  - Material Change of Control from Supplier Selection
  - Contract Conditions
  - Consultation with Credit Reference Agencies
  - Other Information
- Section B – Key Activities Page 6
- Section C – Instructions on Preparing Tenders Page 8
  - Tenders for Selected Contractor Deliverables
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  - Validity
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- Section D – Tender Evaluation Page 9
- Section E – Instructions on Submitting Tenders Page 10
  - Submission of your Tender
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- Section F – Conditions of Tendering Page 11
  - Conforming to the Law
  - Bid Rigging and Other Illegal Practices
  - Conflicts of Interest
  - Government Furnished Assets
  - Standstill Period
  - Publicity Announcement
  - Sensitive Information
  - Remedies for Breach of Contract
  - Reportable Requirements
  - Conditions of Tendering Specific to this Requirement
- DEFFORM 47 Annex A – Tender Submission Document (Offer)
  - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
- Contract Conditions including Schedules 1 – 9
- Evaluation Criteria
- Special Notices and Instructions
- DEFFORM 28 – Tender Return Label
- DEFFORM 30 – The Electronic Transactions Agreement *(note some suppliers have already signed)*

## Section A – Introduction

### Definitions

- A1. This requirement is issued on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"). In this Agreement, the Authority is acting as part of the Crown.
- A2. "You / Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, which has been invited to submit a response to this Invitation to Tender.
- A3. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.
- A4. A "Tender" is the offer that you are making to the Authority.
- A5. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements if specified) which the contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.
- A6. "Schedule of Requirements" Schedule 2 means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.
- A7. The "Statement of Requirement" at Schedule 2 Annex B to the Contract Terms and Conditions details the technical requirements and acceptance criteria Schedule 8 of the Contractor Deliverables. The Statement of Requirement is attached at Schedule 2 Annex B to the Contract Terms and Conditions to this DEFFORM 47.
- A8. "Conditions of Tendering" means the conditions set out in the DEFFORM 47 that govern the competition.
- A9. "Contract Conditions" means the attached conditions that will govern any resultant contract.
- A10. A "Third Party" is any person who is not an employee of the Tenderer as defined at A2.

### Purpose

- A11. The purpose of this ITT is to invite you to propose a solution / best price to our requirement. This documentation explains and sets out the:
- a. tender process and timetable for the next stages of the procurement;
  - b. instructions and conditions that govern this competition;
  - c. information you must include in your Tender and the required format;
  - d. administrative arrangements for the receipt and evaluation of Tenders; and
  - e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.
- A12. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.
- A13. This ITT has been issued to all potential Tenderers that expressed an interest.

A14. This ITT is exempt from the Defence and Security Public Contracts Regulations 2011 due to the requirement being below the current threshold. The requirement was advertised by the Authority in the Defence Contracts Online dated 10<sup>th</sup> December 2014 with the reference P2G/0452 - Manufacture of Puma MK2 Aircraft Covers.

## **ITT Documentation and ITT Material**

A15. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Material means any other material (including patterns and samples), equipment or software issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Documentation, ITT Material and any intellectual property rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

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

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

## **Tender Expenses**

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

## **Material Change of Control from Supplier Selection**

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

## **Contract Conditions**

A19. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/acquisition-operating-framework>.

A20. Standardised Contracting (SC2) conditions are attached. These conditions are non-negotiable.

## **Consultation with Credit Reference Agencies**

A21. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a contract with you.

## **Other Information**

A22. See Special Notices and Instructions at Enclosure 4 to the covering letter



## Section B – Key Activities

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

Stage	Date and Time	Initiated By	Submit to:
Invitation to Bidders Conference <sup>1</sup>	N/A	The Authority	All Tenderers
Date for Confirmation of attendance at Bidders Conference <sup>1</sup>	N/A	Tenderers	N/A
Final date for Clarification Questions / Requests for additional information	20 Calendar Days before the Tender Return Date and Time	Tenderers	<a href="mailto:DESP2G-Comrc1a@mod.uk">DESP2G-Comrc1a@mod.uk</a>
Final Date for Requests for Extension <sup>2</sup>	20 Calendar Days before the Tender Return Date and Time	Tenderers	<a href="mailto:DESP2G-Comrc1a@mod.uk">DESP2G-Comrc1a@mod.uk</a>
The Authority issues Answers and Clarifications	Up to 10 Calendar Days after request and no later than 10 Calendar Days before Tender Return Date and Time	The Authority	All Tenderers <sup>3</sup>
Tender Return	1200 hrs on Monday 15 <sup>th</sup> June 2015	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	30 <sup>th</sup> June 2015(Indicative date)	The Authority	N/A
Negotiations <sup>4</sup>	N/A	The Authority	N/A
Reverse Auction	N/A	The Authority	N/A
Trials / Testing	N/A	The Authority	N/A

### Notes

1. A Bidders Conference is where the Authority presents the requirement to all Tenderers at the same time. A copy of the presentation will be issued to all Tenderers regardless of attendance. It gives you an opportunity to ask questions about the requirement. The Tenderer must provide the name(s) of those attending the Bidders Conference to the above named contact, by the date shown, so that access to the site can be arranged.

2. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.

3. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other bidders. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date.

4. Negotiations are only permitted under the Negotiated procedures, unless the procurement is exempt from advertising under the Public Contracts Regulations 2006 or Defence and Security Public Contracts Regulations 2011.

## **Section C - Instructions on Preparing Tenders**

### **Tenders for Selected Contractor Deliverables**

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

### **Construction of Tenders**

C2. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP. Prices must be Firm Price and agreed at outset.

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

### **Validity**

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

### **Variant Bids**

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

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

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

## Section D – Tender Evaluation

This section details how your Tender will be evaluated

**The Tender Evaluation will be on the basis of** Most Economically Advantageous Tender (MEAT)

This Tender will be evaluated using the MEAT method. This is a comparative score and the scoring method is worked out using the ratio and below. The optimum is the highest technical and commercial scores and lowest price, this together will get the highest total score.

MEAT Ratio  
Technical 60%  
Financial 30%  
Commercial 10%

Enclosure 3 to the Covering Letter details how the Tender Responses will be evaluated and how scoring is going to be awarded by the Project Team

## **Section E – Instructions on Submitting Tenders**

### **Submission of your Tender**

- E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this DEFFORM 47. You must provide 2 paper copies and 1 CDs un-priced and 2 paper copies and 1 CDs priced copies of your Tender. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.
- E2. Please ensure you include the electronic copy/ies of the priced and un-priced Tender with the associated paper copy/ies only. You must label CDs containing electronic copies of the Tender with “Includes Prices” or “Un-priced”. The electronic copies of the Tenders must be compatible with Microsoft Office Word 2003 and other MS Office 2003 applications. If you submit pdf files, password protect or encrypt any information on CDs containing prices you must supply the password so that the Authority can undertake a pricing evaluation.
- E3. You must complete and include DEFFORM 47 Annex A (Offer) (excluding Appendix 1) with your Tender. Where you select ‘Yes’ to any questions you must attach the relevant information.
- E4. You must include the original signed DEFFORM 47 Annex A (Offer) with one paper copy of your priced Tender.
- E5. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.
- E6. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.
- E7. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.
- E8. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.

### **Samples**

- E9. Where samples are required for evaluation purposes you must be prepared to submit them without charge. You should clearly label samples with the following particulars:
- a. your name and address;
  - b. the Tender Reference Number and due date for return of the Tender; and
  - c. the Description and Item Number as shown in the Schedule of Requirements.
- E10. You should send any samples to the named Commercial Officer after the Tender return date.
- E11. The Authority may retain all samples for twelve (12) months from the Tender return date. After this period, the Authority will destroy the samples unless you specifically state you require their return. The Authority may keep samples associated with a successful Tender indefinitely.
- E12. Samples that are consumed will not be returned.

## Section F – Conditions of Tendering

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

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

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

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

### Conforming to the Law

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

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

### Bid Rigging and Other Illegal Practices

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

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

## Conflicts of Interest

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

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

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

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

## Government Furnished Assets

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

## Standstill Period

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

## Publicity Announcement

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

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

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

## Sensitive Information

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

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

### **Remedies for Breach of Contract**

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

### **Reportable Requirements**

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

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



## Ministry of Defence

Tender Ref No. P2G/0452

## Tender Submission Document (Offer)

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

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

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

Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?	Yes / No		
If you have not already signed a corporate level DEFFORM 30 have you attached one?	Yes / No		
Have circumstances changed since Supplier Selection Stage? If so have you attached a revised Statement Relating to Good Standing?	Yes* / No		
Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No		
Do the Contractor Deliverables contain hazardous items, materials or substances?	Yes* / No		
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000? <a href="http://ozone.unep.org/new_site/en/montreal_protocol.php">http://ozone.unep.org/new_site/en/montreal_protocol.php</a>	Yes* / No		
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No		
Have you attached The Bank / Parent Company Guarantee?	Yes / No		
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	Yes / No		
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).			
<b>Tenderer's Declaration of Compliance with Competition Law</b>			
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <ul style="list-style-type: none"> <li>a. the offered price has not been divulged to any Third Party,</li> <li>b. no arrangement has been made with any Third Party that they should refrain from tendering,</li> <li>c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,</li> <li>d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and</li> <li>e. no arrangement has been made with any Third Party otherwise to limit genuine competition.</li> </ul> <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.</p>			
<b>Dated this..... day of ..... Year .....</b>			
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>Signature:</b>   (Must be original) </td> <td style="width: 50%; vertical-align: top;"> <b>In the capacity of</b>  .....  (State official position e.g. Director, Manager, Secretary etc.) </td> </tr> </table>		<b>Signature:</b>  (Must be original)	<b>In the capacity of</b> ..... (State official position e.g. Director, Manager, Secretary etc.)
<b>Signature:</b>  (Must be original)	<b>In the capacity of</b> ..... (State official position e.g. Director, Manager, Secretary etc.)		
<b>Name:</b> (in BLOCK CAPITALS)  <b>duly authorised to sign this Tender for and on behalf of:</b> (Tenderer's Name)	<b>Postal Address:</b>  <b>Telephone No:</b> <b>Registered Company Number:</b>		

## Information on Mandatory Declarations

### Part Tender

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

### Minimum Order Quantities

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

### Notification of Inventions etc.

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

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

- a. any Patent or Registered Design (or application for either) or unregistered design right you own or control which is or appears to be relevant to the Contractor Deliverables, the use of which by or on behalf of the Authority may give rise to a claim under Sections 55 or 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949, or Section 240 of the Copyright, Designs and Patents Act 1988;
- b. any allegation made against you, whether by claim or otherwise, of an infringement of an intellectual property right (whether a Patent, Registered Design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
- c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
- d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.

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

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

### Notification of Foreign Export Control Restrictions

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

- a. Whether all or part of any Contractor Deliverables are or will be subject to:
    - (1) a non-UK export licence, authorisation or exemption; or
    - (2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.
  - b. If requested, a summary of every existing, expected or known licence and restriction referred to in paragraph 7.a. This includes any related obligation or restriction and the extent they place an obligation or restriction on the Authority, including:
    - (1) the exporting nation and the export licence number, where known;
    - (2) the Contractor Deliverables affected;
    - (3) the nature of the restriction and obligation;
    - (4) the authorised end use and end users;
    - (5) any specific restrictions on access by Third Parties, or by individuals based on their nationality, to the Contractor Deliverables; and
    - (6) any specific restrictions on re-transfer or re-export to Third Parties of the Contractor Deliverables or anything delivered or used in the performance or fulfilment of them.
  - c. If requested, you must provide an outline of your mitigation plan to manage performance risks on any resultant contract based on paragraph 7.a.
8. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraphs 7.a and 7.b. If you are unable to obtain adequate information, you must state this in your Tender when responding to paragraph 7.a and 7.b.
  9. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately.
  10. If you have previously provided information under paragraph 7 you can provide details of the previous notification and confirm the validity.
  11. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.
  12. It is the Winning Tenderer(s) responsibility to ensure they comply with any restrictions stated in paragraph 7 during the life of the contract. This includes any restrictions the Authority has explicitly stated / clarified in any ITT documentation.
  13. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 7.

## **Overseas Expenditure**

14. You must provide details in your Tender of any expenditure outside the UK, including:
  - a. country in which sub-contract is placed / to be placed;
  - b. name, division and full postal address of sub-contractor;
  - c. value of sub-contract; and
  - d. date sub-contract placed / to be placed.
15. Should you propose the supply of Articles of US origin the export of which from the USA are subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details in your Tender. This will allow the Authority to make a decision whether the export can or cannot be made under the auspices of the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the

Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

## **Import Duty**

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

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

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

## **Sub-contracts Form 1686**

19. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of either Reportable OFFICIAL or OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the [Security Policy Framework – Contractual Process](#) chapter. You can access a word version of Form 1686 on GOV.UK at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322603/Contractual\\_Process\\_-\\_Appendix\\_5\\_form.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322603/Contractual_Process_-_Appendix_5_form.doc).

## **Small and Medium Enterprises**

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

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

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

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

BiP Solutions Ltd  
Web address: [www.contracts.mod.uk](http://www.contracts.mod.uk)  
Tel No: 0845 270 7099

## **Transparency, Freedom of Information and Environmental Information Regulations**

24. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of->

[government-and-its-services](#)) and the information contained within SC2 Conditions of Contract Clause A14.

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

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

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

## **Electronic Purchasing**

28. Tenderers must note that use of the Authority's Purchase to Payment (P2P) system is a mandatory requirement for this contract. You can view information on the P2P system and the methods to connect at [www.d2btrade.com](http://www.d2btrade.com). Please feel free to consult the service provider on connectivity options. The Winning Tenderer will be required to sign DEFFORM 30 (Electronic Transaction Agreements) at a corporate level - if you have not done so before - and unconditionally accept DEFCON 5J (Unique Identifiers), DEFCON 129J (The Use of Electronic Business Delivery Form); and DEFCON 522J (Payment under P2P). Where Standardised Contracting 2 (SC2) or Standardised Contracting 3 (SC3) conditions are used, unconditional acceptance of all references to P2P in clause G1 is required. A failure to do so will result in your Tender being non-compliant.

## **Change of Circumstances**

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

## **Asbestos, Hazardous Items and Depletion of the Ozone Layer**

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

## **Reservist and other Supplier Support to the Armed Forces**

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

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

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

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

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210470/Cm8655-web\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210470/Cm8655-web_FINAL.pdf)

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

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

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

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

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

Email address: [covenant-mailbox@mod.uk](mailto:covenant-mailbox@mod.uk)

Address: Armed Forces Covenant Team  
Zone D, 6<sup>th</sup> Floor, Ministry of Defence,  
Main Building, Whitehall, London, SW1A 2HB

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

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

## **Military Aviation Authority (MAA) Requirements**

40. In July 2011 the Military Aviation Authority (MAA) launched a new set of Regulatory Publications. Key to these is the Regulatory Articles (RA), which prescribe acceptable means of compliance (AMC) for each separate Regulation. Tenderers who wish to propose an alternative means of compliance must obtain agreement in principle from the MAA (through the Project team) in advance of submitting their Tender. AMC are strongly recommended practices and a justification will be required if they are not followed. Tenderers must consult the MAA where there is more than one AMC. You must confirm how you intend to comply with the RA, and the date you consulted with the MAA.

## **Bank or Parent Company Guarantee**

40. A Bank or Parent Company Guarantee is currently not required, although may be requested at a later date and you are required to confirm that if requested this information will be available



**Ministry  
of Defence**

**P2G Team**

**Contract No: P2G/0452**

**For:**

**Manufacture of Puma MK2  
Aircraft Covers**

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

**And**

**Team Name and address:**

**P2G PT  
Yew 0A # 1037  
Abbeywood  
Bristol  
BS34 8JH**

**E-mail Address: desp2g-comrcl1a@mod.uk  
Telephone Number: 030679 82759  
Facsimile Number: N/A**



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# **MOD Conditions for the Supply of Goods and Associated Services: Contract No: P2G/452**

## **A General Contract Provisions**

### **A1. Interpretation**

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

### **A2. Amendments to Contract**

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

### **A3. Variations to Specification**

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

- b. Any variations that cause a change to:
- (1) fit, form, function or characteristics of the Contractor Deliverables;
  - (2) the cost;
  - (3) Delivery Dates;
  - (4) the period required for the production or completion; or
  - (5) other work caused by the alteration,

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

#### **A4. Precedence**

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
- (1) Sections A - H (and J - L, if section J - L are included) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and , Schedule 3 (Contract Data Sheet);
  - (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
  - (3) the remaining Schedules; and
  - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause A4.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4a. above. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

#### **A5. Severability**

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

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

#### **A6. Assignment of Contract**

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

#### **A7. Waiver**

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

## **A8. Third Party Rights**

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

## **A9. Governing Law**

a. Subject to clause A9.b., the Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to clause A9.b and condition A21 (Dispute Resolution) and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this A9.a and for enforcement of any judgement, order or award given under English jurisdiction.

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

(1) Clause A9.a. shall be amended to read:

“The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Scots Law, and subject to condition A21 (Dispute Resolution) and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the Scottish courts. Other jurisdictions may apply solely for the purpose of giving effect to this clause A9.a and for enforcement of any judgement, order or award given under Scottish jurisdiction”

(2) Condition A8 shall not apply.

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

“In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the purposes of the arbitration, for the avoidance of doubt 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.”

c. Where the Contractor is an Overseas Contractor, any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions. However, a foreign jurisdiction may apply solely for the purposes of giving full effect to this condition A9 and for the enforcement of any judgement order or award given under the English jurisdiction. Each Party irrevocably submits to the jurisdiction provided for under this condition.

d. Each Party warrants to the other that entry into the Contract does not, and the performance of the Contract will not, 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.

e. The provisions of this condition A9 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

f. Where the Contractor is an Overseas Contractor it irrevocably appoints the solicitors or other persons detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

## **A10. Entire Agreement**

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

## **A11. Disclosure of Information**

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

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

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

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

f. The Authority may disclose the Information:

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

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

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

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

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

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

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

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

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

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

## **A12. Publicity and Communications with the Media**

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

### **A13. Protection of Personal Data**

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

### **A14. Transparency**

- a. Subject to clause A14.b but notwithstanding condition A11 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with clause A14.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 9 – Contractor Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this condition A14 shall affect the Contractor's rights at law.

### **A15. Equality**

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

### **A16. Child Labour and Employment Law**

- a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

### **A17. Subcontracting**

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.



b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.

c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

(1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and

(2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) calendar days from receipt of a valid invoice as defined by the subcontract requirements; and

(3) Condition A16 (Child Labour and Employment Law) of the Contract; and

(4) Condition B9 (Timber and Wood-Derived Products) of the Contract.

d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience, in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days notice (or such other notice period as the Authority shall give under this Contract).

e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, 'Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/procurement>.

f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by clause D1.a of condition D1 (Third Party Intellectual Property – Rights and Restrictions). On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with clause D1.g. Any such authorisation shall always be subject to clauses D1.j, D1.k and D1.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.

g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in Schedule 5 to this Contract. Where it is not practicable to include the terms set out in Schedule 5, the Contractor shall report that fact and the circumstances to the Authority.

## **A18. Change of Control of Contractor**

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 #2119, MOD Abbey Wood, South Bristol BS34 8JH, as soon as practicable if the Contractor will potentially undergo a material change of Control. The Contractor shall not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have.

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

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

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

## **A19. Termination for Insolvency or Corrupt Gifts**

The Authority may terminate the Contract with immediate effect, without compensation, by giving written Notice to the Contractor at any time after any of the following events:

### **Insolvency:**

a. where the Contractor is an individual:

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

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

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

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

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

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

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

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

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

service; or

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

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

b. where the Contractor is a firm:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

under schedule A1 of IA 86;

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

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

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

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

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

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

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

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

**Corrupt Gifts:**

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):

(1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:

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

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

(2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

(3) has entered into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the conditions of any such agreement for the payment thereof have

been disclosed in writing to the Authority.

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

(1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;

(2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

(a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

(b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

h. Where the Contract has been terminated under clause A19.f, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

## **A20. Consequences of Termination**

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

## **A21. Dispute Resolution**

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

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

## **A22. Termination for Convenience**

a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.

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

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

## **A23. Contractor's Records**

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

## **A24. Duration of Contract**

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

## **B The Contractor Deliverables**

### **B1. Supply of Contractor Deliverables and Quality Assurance**

- a. The Contractor shall:
  - (1) supply the Contractor Deliverables in accordance with the Specification; and
  - (2) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet);in providing the Contractor Deliverables.
- b. The Contractor shall comply with all applicable Legislation.
- c. The Contractor warrants that it has the full capacity and authority to enter into and to exercise its rights and perform its obligations under the Contract.
- d. The Contractor warrants and represents to the Authority that it shall discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- e. To the extent that it is legally able to do so the Contractor undertakes that until the expiry date, or termination date if the Contract is terminated prior to the expiry date, it shall give the Authority Notice of any litigation, arbitration (in so far as it is permitted to do so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would materially affect the Contractor's ability to perform its obligations under the Contract.

### **B2. Overseas Expenditure**

- a. The Contractor shall report, in writing, to the Authority details of any direct Overseas expenditure valued over £1 million likely to be incurred in the execution of the Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:
  - (1) Contract No;
  - (2) country in which subcontract placed/to be placed;
  - (3) name, Division and full postal address of Subcontractor;
  - (4) value of subcontract as applicable to main Contract;
  - (5) date placed / to be placed.
- b. If no Overseas orders valued over £1 million are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

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

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

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

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

### **B3. Import Licence**

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

### **B4. Export Licence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.



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

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

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

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

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

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

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

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

## **B5. Environmental Requirements**

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

## **B6. Marking of Contractor Deliverables**

- a. The Contractor shall ensure that each Contractor Deliverable is marked clearly and indelibly:
  - (1) in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), or if no such requirement is specified, with the MOD stock reference number or alternative reference number specified in Schedule 2 (Schedule of Requirements);
  - (2) where the Contractor Deliverable has a limited shelf life, with the cure date / date of manufacture or expiry date expressed as specified in Schedule 3 (Contract Data Sheet), or in the absence of such requirement they shall be marked as month (letters) and year (last two figures); and
  - (3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- b. Where it is not possible to mark a Contractor Deliverable with the required particulars, these should be included on the package in which the Contractor Deliverable is packed.

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

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

- (9) where applicable, any particulars which cannot be marked on each Contractor Deliverable in accordance with clause B6.b.;
- (10) any additional markings specified in Schedule 2 (Schedule of Requirements);
- (11) the Primary Packaged Quantity (PPQ) (if Trade Packaging); and
- (12) if Trade Packaging to be marked in blue "TRADE PACKAGE" or if Export Trade Packaging to be marked in black "EXPORT TRADE PACKAGING".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The certification scheme (MPAS) detail is available from:

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

Tel: +44(0)30 679 35353

[DESIMOCSCP-TLS-Pkg@mod.uk](mailto:DESIMOCSCP-TLS-Pkg@mod.uk)

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

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

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

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

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

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

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

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

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

## **B8. Supply of Hazardous Material or Substance in Contractor Deliverables**

a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this condition. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in Schedule 2 (Schedule of Requirements):

(1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;

(2) the International Maritime Dangerous Goods (IMDG) Code;

(3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and

(4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

b. Certification markings, incorporating the UN logo, the package code and other prescribed Information indicating that the package corresponds to the successfully designed type shall be marked on the Packaging in accordance with the relevant regulation.

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

(1) a completed Schedule 6 (Hazardous Articles, Materials or Substances Supplied under the Contract: Data Requirements), confirming whether or not to the best of its

knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and

(2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at clause B8.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under clause B8.c shall be provided in accordance with the REACH Regulations (EC) No 1907/2006 and any additional Information required by the Health and Safety at Work etc Act 1974 and shall contain:

(1) Information required by the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof; and

(2) where the Hazardous Contractor Deliverable is, contains or embodies a Radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope); and

(3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed;

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

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

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

## **B9. Timber and Wood-Derived Products**

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

(1) shall comply with the Contract Specification; and

(2) must originate either:

(a) from a Legal and Sustainable source; or

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

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

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

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

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

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

Authority's request.

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

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

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

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

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

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

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

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

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

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

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

## **B10. Certificate of Conformity**

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. The Contractor shall consider the CofC to be a record in accordance with condition A23 (Contractor's Records).
- c. The Information provided on the CofC shall include:
  - (1) Contractor's name and address;
  - (2) Contractor unique CofC number;
  - (3) Contract number and where applicable Contract amendment number;
  - (4) details of any approved concessions;
  - (5) acquirer name and organisation;
  - (6) Delivery address;
  - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
  - (8) description of Contractor Deliverable, including part number, Specification and configuration status;
  - (9) identification marks, batch and serial numbers in accordance with the Specification;
  - (10) quantities;
  - (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause B10.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain, upon request in accordance with condition A23 (Contractor Records).

## **C Price**

### **C1. Contract Price**

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



## **D Intellectual Property**

### **D1. Third Party Intellectual Property – Rights and Restrictions**

a. The Contractor shall promptly notify the Authority as soon as they become aware of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
- (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

- (1) clauses D1.a – D1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
- (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
- (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice;
- (4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise there from and shall provide such information as the other Party may reasonably require;
- (5) following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
- (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

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

## **E Facilities and Assets**

### **E1. Access to Contractor' Premises**

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

## **F Delivery and Breach Of Contract**

### **F1. Delivery / Collection**

a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.

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

- (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
- (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;
- (4) be responsible for all costs of Delivery; and
- (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

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

- (1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
- (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;
- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
- (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).

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

- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause F1.b; or
- (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause F1.c.

## **F2. Acceptance**

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

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
- (2) the time limit in which to reject the Contractor Deliverables defined in clause F3.b has elapsed.

## **F3. Rejection**

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

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

## **F4. Diversion Orders**

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

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

- (1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;
- (2) any Diversion Order which is beyond the scope of the Contract is to be returned immediately to the Authority's Representative (Commercial) with an appropriate explanation;
- (3) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;
- (4) the Contractor shall be entitled to any additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as an amendment to the Contract in accordance with condition A2. The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging costs.

## **F5. Self to Self Delivery**

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

## **F6. Authority's Remedies for Breach of Contract**

a. If the Contractor:

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

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

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

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

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

b. The Contractor shall not be liable for the Contractor Deliverables' failure to comply with the Specification to the extent that any such non-compliance is attributable to one or more of the following circumstances:

- (1) failure by the Authority to install, operate, maintain or store Contractor Deliverables in accordance with any documentation provided by the Contractor;
- (2) fair wear and tear, misuse, neglect, accident or negligence, repair or modification by the Authority;
- (3) damage caused by the Authority during transportation of the Contractor Deliverables in accordance with clause F1.c.

c. This condition F6 shall apply to any repaired or replacement Contractor Deliverables supplied by the Contractor in accordance with clause F6.a.(8).

d. In the event that the Authority terminates the Contract in whole or in part pursuant to this clause F6.a.(7) or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

e. The Authority's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **G Payment And Receipts**

### **G1. Payment**

a. Schedule 3 (Contract Data Sheet) specifies whether payment is to be enabled by P2P, by MOD Form 640, or by AG173. Payment may only be made using P2P where the Contractor has agreed a DEFFORM 30 with the Authority prior to the Effective Date of Contract and the DEFFORM 30 agreement is referenced in Schedule 3 (Contract Data Sheet).

b. Payment will be made by electronic transfer and prior to submitting any claims for payment under clause G1.e the Contractor shall provide to DBS Finance the name and address of the bank, the sort code and account number to which payment should be made and, if requested by DBS Finance, any further Information where payment is to be made outside of the UK.

c. In order to obtain approval for payment, the Contractor shall, upon completion of the Contract (or any part of the Contract for which the Contractor is entitled to payment):

- (1) where payment is to be made using P2P, submit a properly completed DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes;
- (2) submit the appropriate coloured copy of MOD Form 640 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet) and complete and dispatch the other appropriate coloured copies of the MOD Form 640 in accordance with the instructions shown therein; or
- (3) submit a properly completed AG173 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet).

d. Upon receipt of DEFFORM 129J, the appropriate coloured copy of MOD Form 640 or AG173, the Authority shall without delay:

- (1) approve payment by entering the relevant details into P2P to indicate receipt of the applicable Contractor Deliverables, or completing and signing the brown copy of the MOD Form 640 acknowledging receipt of the Contractor Deliverables, or AG173, and returning it to the Contractor; or
- (2) notify the Contractor in writing, giving reasons why it considers approval of payment may be withheld.

- e. The Contractor shall submit a claim for payment to DBS Finance by either:
  - (1) using a properly prepared message structure and format for invoice payment using P2P in accordance with the arrangements set out, or referenced in DEFFORM 30; or
  - (2) forwarding the completed MOD Form 640 or AG173 signed by the Authority, together with a properly completed DAB Form 10.
- f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:
  - (1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and
  - (2) the date of completion of the part of the Contract to which the request for approval of payment relates.
- g. Where using the MOD Form 640 or AG173, the period of thirty (30) days referred to in clause G1.f shall be exclusive of the number of days that elapse between the date the Contractor receives a MOD Form 640 or AG173 from the Authority showing payment approval in accordance with clause G1.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with clause G1.e.
- h. Where the Authority is responsible for Collecting the Contractor Deliverables the Authority shall be deemed not to have received the DEFFORM 129J, MOD Form 640, AG173 or for the purposes of clause G1.c until the earlier of:
  - (1) the Contractor Deliverables being received by the Consignee; or
  - (2) five (5) days after the Contractor Deliverables are available for Collection by the Authority as confirmed by the Contractor to the Authority's Representative (Transport) in accordance with clause F1c.(4).
- i. The approval of payment by the Authority under clause G1.d shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under condition F6 or otherwise.
- j. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any Government Department.

## **G2. Value Added Tax**

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



registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.

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

### **G3. Debt Factoring**

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

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

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

c. The Contractor shall ensure that the Assignee:

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

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

## **H Contract Administration**

### **H1. Progress Monitoring, Meetings and Reports**

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

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

### **H2. Authority Representatives**

a. Any reference to the Authority in respect of:

- (1) the giving of consent;
- (2) the delivering of any Notices; or

- (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

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

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

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

### **H3. Notices**

a. A Notice served under the Contract shall be:

- (1) in writing in the English Language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's representative, and to the address set out in Schedule 3 (Contract Data Sheet);
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
  - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
  - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

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

DEFCON 14 (Edn11/05) – Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

DEFCON 15 (Edn02/98) – Design Rights and Rights to Use Design Information (see CDR1 – Annex C to Schedule 2)

DEFCON 16 (Edn10/04) – Repair and Maintenance Information (see CDR2 – Annex C to Schedule 2)

DEFCON 76 (SC2) (Edn 10/13 – Contractors Personnel at Government Establishments

DEFCON 21 (Edn 10/04) – Retention of Records

DEFCON 82 (SC2) (Edn10/13) – Special Procedure for Initial Spares

DEFCON 90 (Edn11/06) – Copyright

DEFCON 92 (Edn 08/90) – Failure of Performance

DEFCON 117 (SC2) (Edn10/13) – Supply of Information for NATO Codification And Defence Inventory Introduction

DEFCON 126 (Edn11/06) – International Collaboration

DEFCON 624 (SC2) (Edn 11/13) – Use of Asbestos

DEFCON 684 (Edn 01/04) – Limitation Upon Claims in Respect of Aviation Products

DEFCON 694 (SC2) (Edn 10/13) – Accounting For Property of the Authority

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

**K1 Codification Clause**

- a. The Contractor shall ensure codification of the Puma MK2 Aircraft Covers detailed at Annex A to Schedule 2 in accordance with UK National Codification Bureau including UK expression of interest on ISIS and DEFCON 117. The items are required to be codified prior to delivery to RAF Benson. The cost of codification shall be included at Item 2 to the Schedule of Requirements and will form part of the overall firm price.

L. The processes that apply to this Contract are:

## Schedule 1 - Definitions of Contract

<b>AG173</b>	means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
<b>Articles</b>	means the Contractor Deliverables (goods and / or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. <b>(This definition only applies when DEFCONs are added to these Conditions);</b>
<b>Assets</b>	means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Representative(s)</b>	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b;
<b>Business Day</b>	<p>means any day excluding:</p> <ul style="list-style-type: none"><li>a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;</li><li>b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and</li><li>c. such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least ten (10) Business Days in advance;</li></ul>
<b>Central Government Body</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>a. Government Department;</li><li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>c. Non-Ministerial Department; or</li><li>d. Executive Agency;</li></ul>
<b>Child Labour Legislation</b>	means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause F1.c and Collected and

Collection shall be construed accordingly;

<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
<b>Consignor</b>	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);
<b>Contract Price</b>	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
<b>Contractor</b>	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 9 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
<b>Contractor Deliverables</b>	means the goods and / or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports;
<b>Control</b>	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <p>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</p> <p>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</p> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
<b>CPET</b>	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy

<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>DAB Form 10</b>	means the MOD invoice summary form;
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.aof.mod.uk">https://www.aof.mod.uk</a> ;
<b>DEF STAN</b>	means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition F1 and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;
<b>Denomination of Quantity (D of Q)</b>	means the quantity or measure by which an item of material is managed;
<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Diversion Order</b>	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
<b>Effective Date of Contract</b>	means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;
<b>Evidence</b>	means either: <ul style="list-style-type: none"> <li>a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or</li> <li>b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;</li> </ul>
<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Hazardous Contractor Deliverable</b>	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General

	requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
<b>Information</b>	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
<b>Key Performance Indicators</b>	means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management";
<b>Legal and Sustainable</b>	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
<b>Legislation</b>	means in relation to the United Kingdom: <ul style="list-style-type: none"> <li>a. any Act of Parliament;</li> <li>b. any subordinate Legislation within the meaning of Section 21 of the Interpretation Act 1978;</li> <li>c. any exercise of the Royal Prerogative; or</li> <li>d. any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;</li> </ul>
<b>Military Level Packaging</b>	Packaging that by the nature of the packaged item, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial packaging normally provides;
<b>Military Packaging Accreditation Scheme (MPAS)</b>	is a MOD sponsored scheme to accredit military packaging designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS / DR14. MPAS detail is available from: <a href="mailto:DESJSCSCM-EngTLS-Pkg@mod.uk">DESJSCSCM-EngTLS-Pkg@mod.uk</a> ;
<b>Minor Change</b>	means any change that does not significantly / materially affect the nature of the Contractor Deliverables;
<b>MPAS Registered Organisation</b>	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
<b>MOD Form 640</b>	means the MOD Form in 5 separate parts, each with a different role in the Delivery / Collection and payment process, which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);



<b>NATO</b>	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Overseas Contractor</b>	shall mean a Contractor that is registered and / or based outside of the UK;
<b>P2P</b>	means the MOD electronic ordering, receipting and payment system;
<b>Packaging</b>	<p>Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;</p> <p>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;</p>
<b>Packaging Design Authority (PDA)</b>	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Primary Packaging Quantity (PPQ)</b>	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
<b>Recycled Timber</b>	<p>means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers:</p> <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> <p>it excludes sawmill co-products;</p>
<b>Schedule of Requirements</b>	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables, to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;
<b>Short-Rotation Coppice</b>	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

<b>Specification</b>	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);
<b>STANAG 4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced at <a href="https://www.dstan.mod.uk/faqs.html">https://www.dstan.mod.uk/faqs.html</a> ;
<b>Subcontractor</b>	means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);
<b>Supported Businesses</b>	means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;
<b>Timber and Wood-Derived Products</b>	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;
<b>Transparency Information</b>	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;
<b>Virgin Timber</b>	means Timber and Wood-Derived Products that do not include Recycled Timber.

## Schedule 2 - Schedule of Requirements for Contract No: P2G/0452

For the Manufacture of Puma MK2 Aircraft Covers

<b><u>Contractor Deliverables</u></b>									
Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code	Packaging Requirements inc. PPQ and DofQ (as detailed in DEFFORM 96)	Delivery Date	Total Qty	Firm Price (£) Ex VAT	
								Per Item	Total inc. Packaging (and Delivery if specified in Schedule 3 (Contract Data Sheet) )
1			Supply of Puma Aircraft Covers as identified at Annex A to Schedule 2	XY	Packaging Code - 8  PPQ -1  DofQ - Ea	TBC		N/A	Schedule 2 Annex A
2			Codification of Items detailed at Annex A to Schedule 2 in accordance with Contract Term K1 (a)	N/A	N/A	TBC		N/A	
<b>Total Firm Price</b>									

Item Number	Consignee Address (XY code only)
All	RAF Benson, Wallingford, OX10 6AA

Schedule 2 **Annex A**

**P2G/0452- Manufacture of Puma MK2 Aircraft Covers**

	Part Number (to be assigned by the Contractor)	Nato Stock Number (to be assigned by the contractor)	Total in each individual set	Total Quantity to order
<b>Primary Covers set</b>				
Cockpit cover (including the Nose and equipment on and under the nose)			1	6
Engine cover (and PIPS)			1	6
Main rotor head cover			1	6
Main rotor blades covers			4	24
Tail rotor head			1	6
Tail rotor blades			5	30
Primary covers storage bag			1	6
<b>Secondary Covers Set</b>				
Tail fin			1	6
Tail boom			1	6
Main gearbox up to main rotor head			1	6
IR jammer			1	6
Starboard sponson and wheel			1	6
Port sponson and wheel			1	6
Front wheel			1	6
Stabiliser			1	6
Secondary covers storage bag			1	6
<b>Daily Use Cover Set</b>				
Cockpit cover (not including the nose and equipment on and under the nose)			1	10
Engine cover (including PIPS)			1	10
Daily Use covers storage bag			1	10

## STATEMENT OF REQUIREMENTS FOR AIRCRAFT COVERS FOR THE PUMA HC MK2

### 1.0 INTRODUCTION

1.1 This System Requirements Document defines the requirement for the design, development and performance of environmental covers for use on the Puma HC Mk2 helicopter.

### 2.0 DESCRIPTION AND USE

2.1 The tender requirement is for Puma HC Mk2 environmental covers. The supplier must measure the aircraft themselves to establish the fit of the covers, but take Puma PT advice to build in capability to fit parts not yet on the aircraft.

2.2 The primary covers must protect:

- a. The cockpit, nose and equipment on the nose
- b. The engines (and PIPS)
- c. The Main rotor head
- d. The main rotor blades
- e. The tail rotor head
- f. The tail rotor blades

2.3 The secondary covers must protect:

- a. The tail fin
- b. The tail boom
- c. The Main gear box up to the main rotor head
- d. The IR jammer
- e. The wheels and sponsons
- f. The stabiliser

2.4 Daily use covers must protect:

- a. The cockpit of the aircraft, (not including the forward mounted DAS and equipment below)
- b. The engines (and PIPS)

2.5 The quantity of covers to be ordered is quantity 6 of primary covers, 6 of secondary covers and quantity 10 of daily use covers. Also to be provided is quantity 6 of primary cover stowage bags, 6 of secondary covers stowage bags and quantity 10 of daily use covers stowage bags.

### 3.0 ERGONOMIC REQUIREMENTS

3.1 Primary and secondary protection in temperatures down to -30°C.

3.2 Primary and secondary protection in temperatures up to +50°C.

3.3 Stowage bags will be supplied for the covers when off the aircraft. A primary set bag, (to contain the nose bag, the engine cover, main rotor head cover, quantity 4 main rotor blade covers, tail rotor head cover and quantity 5 tail rotor blade covers), a secondary set bag, (to contain the tail fin cover, the tail boom cover, the main gearbox cover, the IR jammer cover, the stabiliser cover, front wheel cover, port sponson and wheel cover, starboard sponson and wheel cover and the stabiliser cover), and a daily use set bag, (to contain the cockpit cover and the engine cover).

3.4 The covers should give protection from the elements in a humidity of up to and including 70%.

3.5 Covers must be compatible for use in Snowy and Icy environments.

3.6 Covers must be compatible for use in dusty and sandy conditions.

3.7 Covers must be designed to enable fast fit and removal.

3.8 Covers must be able to be fitted and removed with a gloved hand.

3.9 The covers shall be a snug fit to prevent damage to aircraft in windy conditions but loose enough for ease of fitment and removal in extreme conditions.

3.10 Covers must have a warranty of at least 4 years.

3.11 The covers must allow for the access of essential ground equipment whilst in use, (for example dehumidification pipe work) but also provide full protection if that equipment is not connected.

3.12 The supplier must measure and test fit the covers themselves to ensure correct fitment at a date to be agreed, (the only measurements provided by the Puma PT should be for future modification planning to incorporate the required pouches and room, e.g. WSPS).

3.13 The supplier must be able to provide covers for the future modifications with the measurements that we provide, despite the modifications not being embodied on the aircraft at this stage.

3.14 Glazed areas must be protected against scratches and abrasion.

3.15 Covers should be protected from sharp protrusions on the aircraft by re-enforced patches.

3.16 The stowage bags should come with a clear pocket for a contents list.

3.17 A repair kit shall be supplied with each cover.

3.18 Comprehensive fitting instructions should be supplied.

3.19 Tie straps hooks and fasteners are usable with a gloved hand.

3.20 The cover should be labelled with the cover location, (i.e. MRB or Nose cover)

printed on it.

3.21 The cover should be labelled with the set it belongs to (i.e. Primary, secondary or daily use) printed on it.

3.22 The covers should be have port and starboard marked with the appropriate colours.

3.23 Delivery of all the order is ideally required within 3 months of placing of contract, less points will be awarded for the longer the delivery. Over 7 calendar months or longer is unacceptable.

#### 4.0 TECHNICAL REQUIREMENTS

4.1 Where a thermal barrier is necessary a fully breathable and thermally absorbent cover is required.

4.2 The material of the covers should keep their claimed technical characteristics down to a temperature of -30°C.

4.3 The material of the covers should keep their claimed technical characteristics up to a temperature of +50°C.

4.4 Covers must be breathable. The breathability should be shown with an appropriate recognised testing method.

4.5 Covers must be waterproof. The quality of waterproofing should be shown with an appropriate recognised testing method.

4.6 Colour retention of the fabric should be such that fading is not present for the period of the warranty, (minimum four years). This should be shown with an appropriate recognised testing method.

4.7 The Material used should be resistant to abrasion to a standard of at least 300 cycles. This should be shown with an appropriate recognised testing method.

4.8 Covers components should not suffer any lasting or temporary degradation as a result of use in temperatures ranging from -30°C to +50°C.

4.9 All stitching shall be treated in a manner to ensure water ingress is stopped.

4.10 All fasteners fitted to a single thickness should be re-enforced.

4.11 Hooks and or fasteners are to be made of a material preventing scratching of the body and transparencies of the aircraft.

4.12 Breaking strain at 200 hours in QUV rays should be demonstrated using an appropriate recognised testing method.

#### 5.0 SPECIAL DESIGN REQUIREMENTS

5.1 Standardisation - Any aspects of the covers subject to legislation shall be in accordance with EEC directives and/or UK regulations. Should any aspect not be covered by EEC directives and/or UK regulations that aspect shall be in accordance with ISO and/or British Standards; preference shall be given to ISO standards. The covers shall be CE marked.

5.2 Tools - The covers shall be capable of being fitted to the aircraft without the use of tools.

5.3 Airworthiness - The design of the covers shall not in any way adversely affect the airworthiness of the aircraft systems.

5.4 Materials - All materials used in the construction of the covers are to be recorded.

5.5 Surface Finish - The surface finish colour of the covers must be sand coloured.

5.6 Time for delivery – The time to deliver all of the covers should be a maximum of up to 7 calendar months from the point the contract is placed. More points will be awarded if it is demonstrated that all the covers will be supplied sooner.

## 6.0 HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS

6.1 The design shall eliminate loose article hazards in an aircraft handling and servicing environment.

## 7.0 CATEGORISATION

7.1 The covers shall be categorised as Special to Type Aerospace, Ground Support Equipment.

## 8.0 MAINTENANCE

8.1 Any torn fabric is to be repairable using fabric and repair kits supplied with the covers.

## 9.0 SECURITY CLASSIFICATION

9.1 The covers shall be unclassified.

## 10.0 SUMMARY

10.1 This document details the required specification of the covers to be provided for the Puma HC Mk2. Any tender responses will be measured against these criteria and marked in accordance with the Technical Evaluation Criteria at Enclosure 3 to Deform 47 Appendix 1

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## Ministry of Defence

**CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u>  P2G/0452	2. <u>CDR Number</u>  001	3. <u>Data Category</u>  Manufacturing Pack	4. <u>Contract Delivery Date</u>  On completion of the contract
5. <u>Equipment/Equipment Subsystem Description</u>  All items listed at Annex to Schedule 2		6. <u>General Description of Data Deliverable</u>  Manufacturing Data Pack for the Aircraft Covers in accordance with UK DID MDP (Edn 2/98)	
7. <u>Purpose for which data is required</u>  Future tendering for the manufacture of Puma MK2 Aircraft Covers		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  Defcon 15 and Defcon 21  b. <u>Special IP Conditions</u>	
9. <u>Update/Further Submission Requirements</u>  N/A being delivered at completion of contract			
10. <u>Medium of Delivery</u>  1 CD/Rom and Paper		11. <u>Number of Copies</u>  1 CD/Rom 1 Paper Copy	

## Ministry of Defence

### CONTRACT DATA REQUIREMENT

1. <u>ITT/Contract Number</u>  P2G/0452	2. <u>CDR Number</u>  002	3. <u>Data Category</u>  Technical Publications Pack	4. <u>Contract Delivery Date</u>  On completion of the contract
5. <u>Equipment/Equipment Subsystem Description</u>  All items listed at Annex to Schedule 2		6. <u>General Description of Data Deliverable</u>  ATA-100	
7. <u>Purpose for which data is required</u>  Spares and Repairs Data Pack for first/fourth line maintenance of the Covers.  Data is required for future tendering.		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  Defcon 16 and Defcon 21  b. <u>Special IP Conditions</u>	
9. <u>Update/Further Submission Requirements</u>  N/A			
10. <u>Medium of Delivery</u>  CD/Rom		11. <u>Number of Copies</u>  1 copy	

### Schedule 3 - Contract Data Sheet for Contract No: P2G/0452

<b>Condition A9 Governing Law</b>	<p>Contract to be governed and construed in accordance with: (one must be chosen)</p> <p>English Law      <input checked="" type="checkbox"/></p> <p>Scots Law      <input type="checkbox"/> clause A9.b shall apply</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Foreign Contractors in accordance with clause A9.f (if applicable) are as follows:</p>
<b>Condition A22 Termination for Convenience</b>	<p>The Notice period for terminating the Contract shall be 20 Business Days.</p>
<b>Condition A24 Contract Period</b>	<p>The Contract will expire on completion of delivery of all the items identified on the Schedule 2.</p>
<b>Clause B1.a.(2) Contractor's Obligations – Quality Assurance</b>	<p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes      <input type="checkbox"/></p> <p>No      <input checked="" type="checkbox"/></p> <p><b>Other Quality Assurance Requirements:</b></p> <p>AQAP 2110</p> <p>DEFSTAN 81-41 Part 6 Issue 6 Packaging of Defence Material., Packaging and Marking.</p> <p>DEFCON 129 Edn 07/08 Packaging.</p> <p>RA5404 – Fault Reporting and Investigation</p> <p>No second hand or previously used material not owned by the authority shall be supplied in furtherance of this contract without the express written permission of the Procurement Management Branch (PMB). The PMB will request full history of any such material.</p>
<b>Condition B6 Marking of Contractor Deliverables</b>	<p>Delivery and Inspection Note needs to include:</p> <ol style="list-style-type: none"> <li>1. Consignee Name and Address</li> <li>2. Certificate of Conformity</li> <li>3. Reference Number and Date of Document</li> <li>4. MOD Contract Number</li> <li>5. Description of Goods and Quantity</li> <li>6. Any relevant deviations or concessions</li> <li>7. Part Number and Full Nato Stock Number</li> <li>8. Any other details required in the main GPSC</li> </ol>

	<p>9 NCAGE</p> <p>Packaging Label needs to include</p> <p>1 NCAGE 2 Part Number and Full Nato Stock Number 3 Denomination of Quantity 4 Description 5 Quantity 6 Batch information</p>
<b>Condition B8 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances</b>	<p>A completed Schedule 6 (Hazardous Articles, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be delivered with your Tender Response and also provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p><a href="mailto:DSEA-Land-MovTpt-DGHSIS@mod.uk">DSEA-Land-MovTpt-DGHSIS@mod.uk</a></p>
<b>Clause B9.i Timber and Wood-Derived Products</b>	<p>Completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) is to be delivered with your Tender Response.</p>
<b>Condition B10 Certificate of Conformity</b>	<p>Is a Certificate of Conformity required for this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Applicable all Items at Annex A to Schedule 2</p> <p>If Yes, does the Contractor Deliverables require traceability throughout the supply chain?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Applicable to all items at Annex A to Schedule 2</p>

<b>Condition C1 Contract Price (Excl. Vat)</b>	All items detailed at Schedule 2 shall be Firm Price excluding VAT
<b>Clause F1.a Delivery</b> (for Schedule 2 items)	The Contractor will be responsible for delivery to RAF Benson, Wallingford, OX10 6AA
<b>Clause F1.b Delivery by the Contractor</b> (for Schedule 2 items)	Each consignment of the contractor deliverables to be accompanied by a DEFFORM 129J
<b>Clause F3.b Rejection</b>	Time limit for rejection of the Contractor Deliverables shall be 30 Business Days.
<b>Clause G1.a Payment</b>	DEFFORM 30 Agreement refers:  Insert Ref
<b>Clause G1.c.(2) and G1.c.(3) Payment</b> (for Schedule 2 items)	Payment is to be enabled by Purchase 2 Payment (P2P)
<b>Clause H1.a Progress Monitoring</b>	The Contractor shall be required to attend the following meetings:  Pre Production Meeting  Test Inspection Meeting  Final Production Meeting  The Project Team will be responsible for arranging these meetings. Location is likely to be RAF Benson or Abbeywood. Cost for these meetings is to be included in the Firm Price.
<b>Clause H1.b Progress Reports</b>	The Contractor will be required to submit the following Reports:  Relevant information to support the meetings detailed above
<b>Clause H2.b Authority's Representatives</b>	The Authority's Representatives for the Contract are as follows:  Commercial: <a href="mailto:DESP2G-Comrcl1a@mod.uk">DESP2G-Comrcl1a@mod.uk</a>  Project Manager: <a href="mailto:DESP2G-EngGrad2@mod.uk">DESP2G-EngGrad2@mod.uk</a> or <a href="mailto:DESP2G-PumaEngAv2@mod.uk">DESP2G-PumaEngAv2@mod.uk</a>  Payment: <a href="mailto:DESP2G-Comrcl1a@mod.uk">DESP2G-Comrcl1a@mod.uk</a>
<b>Clause H3.a.(3) Notices</b>	Notices served under the Contract shall be sent to the following

	address:  Authority: <a href="mailto:DESP2G-EngGrad2@mod.uk">DESP2G-EngGrad2@mod.uk</a> or <a href="mailto:DESP2G-PumaEngAv2@mod.uk">DESP2G-PumaEngAv2@mod.uk</a>
<b>Clause H3.a.(5) Notices</b>	Notices served under the Contract can be transmitted by electronic mail  Yes <input checked="" type="checkbox"/>  No <input type="checkbox"/>
<b>Other Addresses and Other Information</b> (Covers forms and publications addresses and official use information)	<b>See Annex A to Schedule 3 (DEFFORM 111)</b>

## Appendix - Addresses and Other Information

**1. Commercial Officer**

DESP2G-Comrc1a  
Yew OA # 1037  
Abbeywood  
Bristol, BS34 8JH  
Email: [DESP2G-Comrc1a@mod.uk](mailto:DESP2G-Comrc1a@mod.uk)

**2. Project Manager, Equipment Support Manager or PT Leader**  
(from whom technical information is available)

DESP2G-EngGrad2 or DESP2G-PumaEngAv2  
Yew OA # 1037  
Abbeywood  
Bristol, BS34 8JH  
Email: [DESP2G-EngGrad2@mod.uk](mailto:DESP2G-EngGrad2@mod.uk) or [DESP2G-PumaEngAv2@mod.uk](mailto:DESP2G-PumaEngAv2@mod.uk)

**3. Packaging Design Authority**

N/A

(Where no address is shown please contact the Project Team in Box 2)

**4. (a) Supply Management Branch**[DESP2G-SCMgr@mod.uk](mailto:DESP2G-SCMgr@mod.uk)

Tel No: 030679 82785

(b) U.I.N. D1949A

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5397  
2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

**9. Consignment Instructions**

The items are to be consigned as follows:

RAF Benson  
Wallingford  
OX10 6AA

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM**, DE&S, DSCOM, MOD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B. JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)  
JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)**11. The Invoice Paying Authority (see Note 1)**

Ministry of Defence ☎ 0151-242-2000  
DBS Finance  
Walker House, Exchange Flags Fax: 0151-242-2809  
Liverpool, L2 3YL **Website is:**  
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement>

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site  
Lower Arncliffe, Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via email:**[DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)**7. Quality Assurance Representative:**

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

[DESP2G-QAMgr@mod.uk](mailto:DESP2G-QAMgr@mod.uk)

**AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

For Official Use Only Recoverable YES ☐ NO ☐Issue of Government Property YES ☐ NO ☐

VAT Contractor - Country of Origin (delete those not applicable)

UK  
☐Overseas (non-EC  
Country) ☐Overseas (EC Country)  
☐

If EC specify country:

Finance Branch

LH No/Project No  
Requisition NoProject  
Management/  
Production branch  
reference  
Place of

		manufacture			
Outside the scope	<input type="checkbox"/>	Item Nos		Place of packaging	
Exempt	<input type="checkbox"/>	Item Nos		Contractor's Tel No	
Taxable Zero Rate	<input type="checkbox"/>	Item Nos			
Taxable - Standard Rate	<input type="checkbox"/>	Item Nos			

(where a contract is with an overseas contractor JSP 916 should be consulted)



**Schedule 4 - Contract Change Process Procedure (i.a.w. clause A2.b) for Contract No: P2G/0452**

**1. Authority Changes**

Subject always to Condition A2 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

**2. Notice of Change**

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clause 3 below.

**3. Contractor Change Proposal**

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

- (1) the effect of the Change on the Contractor's obligations under the Contract;
- (2) a detailed breakdown of any costs which result from the Change;
- (3) the programme for implementing the Change;
- (4) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
- (5) such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

**4. Contractor Change Proposal – Process and Implementation**

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

- (1) evaluate the Contractor Change Proposal;
- (2) where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition A2 (Amendments to Contract); or

(2) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.

## **5. Contractor Changes**

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3b above, and the process at Clause 4 above shall apply.

## **Schedule 5 – Export Licence (i.a.w. clause A17.g) for Contract No: P2G/0452**

### **Condition to be included in relevant Subcontracts**

#### **Export Licence**

1. In this Condition the following words and expressions shall have the meanings set respectively against them:

- a. “Agreement” means this Subcontract;
- b. “Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
- c. “Contract” means Contract No [insert MOD Contract No] between the Authority and the Contractor;
- d. “Contractor” means [insert name of prime contractor];
- e. “First Party” means [insert name of purchaser];
- f. “Second Party” means [insert name of supplier].

2. In this Condition, “foreign” and “overseas” shall be understood from the position of the Authority and be regarded as “non-UK”.

3. The Second Party shall notify the First Party promptly if the Second Party becomes aware that all or part of any article or service (including Information and software) to be delivered under the Agreement is or will be subject to a non-UK export licence, authorisation or exemption or any other related transfer control that imposes or will impose end use, end user, re-export or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon nationality, affecting the Authority, the Contractor or both. This does not include the Intellectual Property-specific restrictions of the type referred to in condition D1 (Third Party Intellectual Property – Rights and Restrictions) of the First Party’s Conditions of Contract.

4. If requested by the First Party, the Second Party shall give the First Party a summary of every existing or expected licence and restriction referred to in clause 3 and any related obligation or restriction to the extent that they place an obligation or restriction upon the First Party or the Authority with which the First Party or the Authority must comply including, to the extent applicable to such obligations or restrictions:

- a. the exporting nation, including the export licence number (where known);
- b. the article or service (including software and Information) affected;
- c. the nature of the restriction and obligation;
- d. the authorised end use and end users and other parties;
- e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the articles or to anything Delivered or used in the performance or fulfilment of the services; and
- f. any specific restrictions on re-transfer or re-export of the articles or of anything Delivered or used in the performance or fulfilment of the services.

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

5. When an export licence is required from a foreign government for the performance of the Agreement, the Second Party shall promptly consult with the First Party on the licence requirements and, where the Second Party is the applicant for the licence:

a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be Delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:

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

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

b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the *[insert name of the Contractor]* and the Ministry of Defence of the United Kingdom";

c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract.

6. If the information required under clauses 3 and 4 has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 3 and 4.

7. If the Second Party becomes aware of any changes in the information notified previously under clause 3, 4 or 6 that would affect the Contractor's or the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Second Party shall notify the First Party promptly of the change.

8. If the Second Party or any subcontractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with its purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regards to any defence or security issue that may arise.

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

10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's Subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.

11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the same terms as set out in these clauses 1 - 14. Where it is not practicable to include these said terms, the Second Party shall report that fact and the circumstances to the First Party.

12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in clause 3:

a. the First Party may, or at the request of the Second Party undertake to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:

- (1) the exporting nation, including the export licence number (where known);
- (2) the items or information affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
- (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

b. This will not include Intellectual Property-specific restrictions of the type mentioned in condition D1 (Third Party Intellectual Property – Rights and Restrictions) in relation to the First Party's Conditions of Contract instead of the Contractor.

c. The Second Party and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the First Party.

d. The Second Party shall notify the First Party immediately if it is unable for whatever reason to abide by any restriction advised by the First Party to the Second Party under clause 12.

13. Where restrictions are advised by the First Party to the Second Party under clause 12, the First Party and the Second Party shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Agreement by the Second Party, then the First Party shall consult with the Second Party on alternative solutions and the terms of the Agreement shall be amended to give effect to the agreed solution. If no alternative solution satisfying the essential terms of the Agreement is agreed by the Parties then the First Party shall have the right to terminate the Agreement. Termination under these circumstances will be in accordance with the principles of condition A22 (Termination for Convenience) of the First Party's Conditions of Contract.

14. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority has undertaken to provide the Second Party with all reasonable assistance to facilitate the granting of an export licence by a foreign Government in respect of performance of the Agreement.

## **Schedule 6 - Hazardous Articles, Materials or Substances Supplied under the Contract**

### **Hazardous Articles, Materials or Substances Statement by the Contractor**

Contract No: P2G/0452

Contract Title: Manufacture of Puma MK2 Aircraft Covers

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Articles, materials or substances to be supplied ☐

\* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty: ) attached in accordance with condition B8. ☐

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (☑) as appropriate

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To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)  
Defence Safety and Environment Authority (DSEA)  
Movement Transport Safety Regulator (MTSR)  
Hazel Building Level 1, #H019  
MOD Abbey Wood (North)  
Bristol BS34 8QW

**Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract: Data Requirements for Contract No: P2G/0452**

The following information is provided in respect of clause B9.h (Timber and Wood-Derived Products):

<b>Schedule of Requirements item and timber product type</b>	<b>Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence</b>	<b>Volume of timber Delivered to the Authority with other evidence</b>	<b>Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy</b>	<b>Total volume of timber Delivered to the Authority under the Contract</b>

## **Schedule 8 - Acceptance Procedure (i.a.w. condition F2) for Contract No: P2G/0452**

The initial set will require a trial fit at RAF Benson by service personnel. Confirmation that the trial fit is in accordance with the Statement of Requirement (Schedule 2 Annex B) will be given by the Project Manager as detailed at Box 2 of the Defform 111 (Schedule 3 Annex A). On receipt of confirmation from the Project Manager that the initial set is acceptable and in accordance with the Statement of Requirement the Contractor shall be given authority by the Project Manager to proceed with the manufacture of the remaining sets of Aircraft Covers. The remaining sets will be inspected by the Role Bay at Puma Force on delivery to RAF Benson. The Time limit for rejection of the Contractor Deliverables shall be 30 Business Days. After this period the Project Team will have deemed to have accepted the delivery of the covers

Should the initial set of covers that are delivered for the trial fit be considered to not be acceptable and not in accordance with the Statement of Requirement the Contractor will be required to arrange pick up of the defective covers from RAF Benson. On pick up of the covers from RAF Benson the contractor will be required to rectify the issues highlighted within 4 weeks and return the revised set of covers to RAF Benson for a further trial fit.



**Schedule 9 - Contractor's Commercially Sensitive Information Form (i.a.w. condition A14) for Contract No: P2G/0452**

Contract No: P2G/0452 – Manufacture of Puma MK2 Aircraft Covers
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address:

**Evaluation Criteria**

1. The Authority shall evaluate Tenders on the basis of the most economically advantageous having regard to the Evaluation Criteria set out in this document.
2. The evaluation team will consist of specialists in the Technical, Commercial and Financial areas. Where more than one specialist is evaluating an area the score awarded will be achieved by consensus.
3. The Authority may seek clarification from Tenderers if any part of their proposal cannot be evaluated adequately.
4. The following split will be applied to the Evaluation Criteria:
  - a. Technical – 60%
  - b. Commercial – 10%
  - c. Financial – 30%
5. A further breakdown of how the evaluation criteria will be applied is included at the following Appendixes to this document (Enclosure 3 to ITT P2G/0452)
  - a. Appendix 1 – Technical Evaluation Criteria Breakdown and Evaluation Matrix
  - b. Appendix 2 – Commercial Evaluation Criteria Breakdown (including Appendix 2a)
  - c. Appendix 3 – Financial Evaluation Criteria Breakdown
  - d. Appendix 4 – Overall Score

**TECHNICAL ASPECTS FOR THE INVITATION TO TENDER FOR MANUFACTURE OF PUMA MK2 AIRCRAFT COVERS**

1 This document sets out the technical evaluation criteria against which tenderers that submitted a tender for the Manufacture of Puma MK2 Aircraft Covers. The total score available is 120

2 The tenderers technical response will be marked in 3 stages as detailed below:

**Stage 1**

3 Stage 1 is scored out of 5 marks; failure to achieve a score will disqualify you from the competition

**Stage 2**

4 Stage 2 is a mandatory stage, failure to achieve a yes response to the mandatory criteria will disqualify you from the competition and you will not be able to move forward to stage 3. You must provide supporting evidence in your tender response to enable the tender evaluation to be carried out and you must cross reference your supporting evidence to the relevant paragraph of your tender response.

**Stage 3**

5 Stage 3 is a scored stage. Total points available are 115. A score of yes at stage 3 will achieve 5 points and a score of no will score 0 points You must provide supporting evidence in your tender response to enable the tender evaluation to be carried out and you must cross reference to the relevant paragraph of your tender response.

### **Stage 1**

6 The following criteria must gain a score. Failure to do so will disqualify you from the competition.

Serial No. SRD Ref.	Criteria	Answered? Y = Scored N = 0 pts	Score (Circle)	Marking Criteria (Qualifying the score given)
1. 3.23	How quickly can delivery be made for all the covers after placing the contract?	Y / N	1 2 3 4 5	1- No more than 7 calendar months 2- 5 to 6 calendar months 3- 4 to 5 calendar months 4- 3 to 4 calendar months. 5- Less than 3 calendar months.
Score:			(Out of 5)	

### **Stage 2**

7 The following criteria are mandatory suppliers must gain **Yes** on all of the following criteria. Failure to do so will disqualify you from the competition.

Serial No. SRD Ref.	Criteria	Para in Tender Response (to be completed by the Tenderer)	Marking Criteria (To be completed by the Tender Evaluation Team)
2. 3.12	Can the supplier measure/test fit the covers themselves, (taking advice on parts to be embodied)?		Yes/No
3. 3.13	Can the supplier design covers to encompass future modifications not embodied on the aircraft?		Yes/No
4. 3.14	Are glazed areas protected against scratches and abrasion in some manner?		Yes/No
5. 4.4	Are the covers breathable?		Yes/No
6. 3.5	Are the covers compatible for use in Snowy and Icy environments?		Yes/No
7. 3.6	Are the covers compatible for use in dusty and sandy conditions?		Yes/No
8. 3.7	Are the covers designed to enable fast fit and removal?		Yes/No
9. 3.8	Can the covers be fitted and removed with a gloved hand?		Yes/No
10.	Are the covers waterproof?		Yes/No

4.5			
11. 4.7	Is the Material used resistant to abrasion to a standard of at least 300 cycles?		Yes/No
12. 3.10	Do the covers have a warranty for a minimum of 4 years?		Yes/No
13. 5.3	Does the design of the covers ensure they do not in any way adversely affect the airworthiness of the aircraft?		Yes/No
14. 3.15	Are the covers protected from sharp protrusions on the aircraft by re-enforced patches? (i.e Wire Strike)		Yes/No
15. 5.5	Is the surface finish colour of the covers sand coloured?		Yes/No
16. 5.1	Does the equipment comply with EU/UK legislation? Are they CE marked?		Yes/No

### **Stage 3**

8 The following criteria are not mandatory they will be added to the combined results of the previous two categories against which your tender application will be considered.

<b>Serial No. SRD Ref.</b>	<b>Criteria</b>	<b>Para in Tender Response (to be completed by the Tenderer)</b>	<b>Marking Criteria (Yes No)</b>
17. 3.1	Do the covers protect down to -30°C?		Yes/No
18. 4.2	Does the material of the covers keep their claimed technical characteristics down to a temperature of -30°C?		Yes/No
19. 3.2	Do the covers protect up to +50°C?		Yes/No
20. 4.3	Does the material of the covers keep their claimed technical characteristics up to a temperature of +50°C?		Yes/No
21. 3.3	Are stowage bags supplied to contain covers in compliance with the SRD?		Yes/No
22. 4.8	Cover components will not suffer any lasting/temporary degradation from use in temps from -30°C to +50°C?		Yes/No
23. 3.9	Are the covers a snug fit but loose enough for ease of fitment and removal in extreme conditions?		Yes/No
24.	Do covers allow for access of ground		Yes/No

3.11	equipment when in use, but also provide full protection not connected?		
25. 3.16	Do the stowage bags have a clear pocket to contain the contents list?		Yes/No
26. 4.1	Where a thermal barrier is necessary is a fully breathable and thermally absorbent cover provided?		Yes/No
27. 4.6	Do the covers retain their colour for minimum 4 years? Is this shown with a recognised testing method?		Yes/No
28. 4.12	Can the breaking strain at 200 hours in QUV rays be demonstrated using an appropriate recognised testing method?		Yes/No
29. 3.4	Do the covers give protection from the elements in a humidity of up to and including 70%?		Yes/No
30. 4.10	Are all fasteners fitted to a single thickness re-enforced?		Yes/No
31. 5.4	Are all materials used in the construction of the covers recorded?		Yes/No
32. 3.17	Is a repair kit supplied with each cover?		Yes/No
33. 3.18	Are comprehensive fitting instructions supplied?		Yes/No
34. 3.19	Can the tie straps, hooks and fasteners be easily used with a gloved hand?		Yes/No
35. 3.20	Is the cover labelled with the cover location, (i.e. MRB or Nose cover) printed on it?		Yes/No
36. 3.21	Is the cover labelled with the set it belongs to (i.e. Primary, secondary or daily use) printed on it?		Yes/No
37. 3.22	Do the covers have port and starboard marked on them with the appropriate colours?		Yes/No
38. 4.11	Are hooks and fasteners made of a material preventing scratching of the body & transparencies of the aircraft?		Yes/No
49. 5.2	Can the covers be fitted without tools?		Yes/No

9 The total score for the tender application is established as per the table below, this score will be input into the Overall Evaluation Sheet at Appendix 4 to Enclosure 3 of the Defform 47 and combined with the overall Technical and Commercial Evaluation to achieve an overall score

	Scores	Mark DQ if disqualified
Stage 1.	Score available 5	

Stage 2	Any No responses received	
Stage 3	Score available 115	
Total Score		

**COMMERCIAL ASPECTS FOR THE INVITATION TO TENDER FOR MANUFACTURE OF PUMA MK2 AIRCRAFT COVERS**

1 This document sets out the commercial criteria against which suppliers that submitted a tender for the Manufacture of Puma MK2 Aircraft Covers

2 The suppliers commercial response will be marked in two stages as detailed below.

**Stage 1**

3 Stage 1 will be a Pass/Fail stage and will consist of an evaluation against the Commercial Terms and Conditions and an evaluation of other Commercial issues.

4 The Tenderer's response to the Authority's Commercial Terms and Conditions will be assessed as follows:

a. Red Response – Rejection or a low degree of acceptance. The Authority reserves the right to reject the tender

b. Amber Response – High degree of Acceptance by the Tenderer with only minor non compliances. The authority may elect to address the minor compliance through clarification.

c. Green Response – Full unqualified acceptance of Condition by Tenderer. The tender is fully compliant with the Contract Terms and Conditions.

5 Other commercial issues will be assessed on a pass/fail. A fail will result in elimination from the tendering process.

6 Tenderers are required to complete the Contract Terms and Conditions Compliance Matrix at Appendix 2a to Enclosure 3 Defform 47 by detailing **only** either "Unqualified Acceptance" or "Rejection" and where applicable any assumptions, limitations or exclusions that may apply and answer the Yes/No Questions.

7 To be eligible to move forward to stage 2 the Tenderer must receive no "Red Assessments" from the Authority and receive a Pass to the Yes/No questions.



## **Stage 2**

6 Stage 2 will be a weighted evaluation and will be assessed using the criteria that is made available for each question. The maximum score available for this section is 10 with each area scoring a maximum of 5. The areas to be evaluated are as follows:

- a. Any Amber responses to stage 1
- b. Risk Transfer (including Assumptions, Dependencies, Exclusions and any proposed Defcon 76 Limits of Liability. Any proposed Defcon 76 Limit of Liability will need to be in accordance with the SNITS)

### **Question 1**

7 Has the tenderer provided a response to stage one that has resulted in an Amber Assessment being given by the Authority?

8 The maximum score available for this question is 5 and the minimum score available is 0. Scores will be attributed as follows:

No Amber Assessments	5
1-2 Amber Assessments	3
3-5 Amber Assessments	1
More than 5 Amber Assessments	0

### **Question 2**

9 Has the Tenderer proposed any Risk Transfer to the Authority (including Dependencies, Assumptions, Exclusions and any proposed Defcon 76 Limit of Liability)

10 The maximum score available for this question is 5 and the minimum score is 0. Scores will be attributed as follows:

The Tenderer has not proposed any Risk Transfer to the Authority	5
The Tenderer has proposed a small amount of Risk Transfer	3
The Tenderer has proposed a significant amount of Risk Transfer	1
The Tenderer has proposed an unacceptable amount of Risk Transfer. A score of 0 will result in elimination from the tendering process.	0

11 Scores will be input into a spreadsheet – see Enclosure 3 Deform 47 Appendix 4.

**COMMERCIAL ASPECTS FOR THE INVITATION TO TENDER FOR TECHNICAL ASSISTANCE TO THE PUMA ENGINEERING MANAGER FOR THE REVIEW AND RELEASE TO SERVICE APPROVAL OF LEGACY LIFE EXTENSION PROGRAMME DESIGN CHANGES**

Evaluation spreadsheet

**Stage 1**

.1. Tenderers are required to complete the following Contract Terms and Conditions Compliance Matrix by detailing **only** either “Unqualified Acceptance” or “Rejection” and where applicable any assumptions, limitations or exclusions that may apply.

Contract Term and Conditions – Defence conditions and Special Conditions	Unqualified Acceptance  √	Rejection (ie anything other than unqualified acceptance)  X	Remarks including any assumptions, limitations or exclusion	Authority Assessment: <b>Red</b> = Tender Rejection; <b>Amber</b> = Tender Clarification / Negotiation; <b>Green</b> = Tender Compliance
A.General Contract Provisions				
A1. Interpretation				
A2. Amendments to Contract				
A3. Variations to Specification				
A4. Precedence				
A5. Severability				
A6. Assignment of Contract				
A7. Waiver				
A8. Third Part Rights				
A9. Governing Law				
A10. Entire Agreement				
A11. Disclosure of Information				
A12. Publicity and Communications with the media				
A13. Protection of				

Personal Data				
A14. Transparency				
A15. Equality				
A16. Child Labour and Employment Law				
A17. Subcontracting				
A18. Change of Control of Contractor				
A19. Termination for Insolvency or Corrupt Gifts				
A20. Consequences of Termination				
A21. Dispute Resolution				
A22. Termination for Convenience				
A23. Contractors Records				
A24. Duration of Contract				
B.The Contractor Deliverables				
B1. Supply of Contractor Deliverables and Quality Assurance				
B2. Overseas Expenditure				
B3. Import Licence				
B4. Export Licence				
B5. Environmental Requirements				
B6. Marking of Contractor Deliverables				
B7. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)				
B8. Supply of Hazardous Material or Substance in Contractor Deliverables				
B9. Timber and Wood-Derived Products				
B10. Certificate of Conformity				

C.Price				
C1. Contract Price				
D.Intellectual Property				
D1. Third Party Intellectual Property – Rights and Restrictions				
E1. Access to Contractors Premises				
F1. Delivery/Collection				
F2. Acceptance				
F3. Rejection				
F4. Diversion Orders				
F5. Self to Self Delivery				
F6. Authority's Remedies for Breach of Contract				
Payment and Receipts				
G1. Payment				
G2. Value added Tax				
G3. Debt Factoring				
H.Contract Administration				
H1. Progress Monitoring, Meetings and Reports				
H2. Authority Representatives				
H3. Notices				
Section J. Project Specific DEFCONS and DEFCON SC variants that apply				
DEFCON 14 (Edn 11/05) – Inventions and Crown Rights and Ownership of Patents and Registered Designs				
DEFCON 15 (Edn 02/98) - Design Rights and Rights to use Design Information				
DEFCON16 (Edn 10/04) – Repair and Maintenance Information				

DEFCON 76 (SC2) (Edn 10/13) – Contractors Personnel at Government Establishments				
DEFCON 21 (Edn 10/04) – Retention of Records				
DEFCON 82 (Edn10/13) – Special Procedure for Initial Spares				
DEFCON 90 (Edn 11/06) – Copyright				
DEFCON 92 – (Edn 08/90) – Failure of Performance				
DEFCON 117 (SC2) Edn 10/13) – Supply of Information for NATO Codification and Defence Inventory Introduction				
DEFCON 126 (Edn 11/06) – International Collaboration				
DEFCON 624 (SC2) (Edn 11/13) – Use of Asbestos				
DEFCON 684 (Edn 01/04) – Limitation Upon Claims in Respect of Aviation Products				
DEFCON 694 (SC2) (Edn 10/13) – Accounting For Property of the Authority				
K. The special Conditions that apply to this Contract are  K1 – Codification Clause				

2 Tenderers are required to complete the Matrix below by detailing **only** either “ Yes” or “No” to the questions below, a response of no will disqualify you from the competition.

Pass / Fail Questions	Yes/No
-----------------------	--------

No proposed limits of Liability other than those allowed under Defcon 76	
Returns completed in Defform 47 Annex A (Offer)	
Completed Schedule 6 – Hazardous Articles, Materials or Substances supplied under the Contract	
Completed Schedule 7 – Timber and Wood derived products supplied under the contract	
Completed Schedule 9 – Contractors Commercially Sensitive Information Form	
Signed Defform 30 (if requested in the Tender Documentation)	

Project Team Assessment to Question 2	Pass/Fail  (to be completed by the PT)
---------------------------------------	--

## Stage 2

Question number	Score (to be completed by the PT)
1	
2	
Total Score	

**FINANCIAL ASPECTS FOR THE INVITATION TO TENDER FOR MANUFACTURE OF PUMA  
MK2 AIRCRAFT COVERS**

- 1 The Tender with the lowest price will achieve a score of 100. Where a Tender is 100% or greater than the lowest tender a score of zero will be awarded.
- 2 All other Tenders will be awarded a score in proportion with the position of their price relative to the lowest tender and the 100% collar. This score will be input into the Overall Evaluation Sheet at Appendix 4 to Enclosure 3 of the Defform 47 and combined with the overall Technical and Commercial Evaluation to achieve an overall score

**Enclosure 3 to DEFFORM 47**  
**Appendix 4**  
**Overall Evaluation**

Overall Evaluation Sheet

	Total Score Available	Total Score Achieved	% of Total Score achieved	Split of overall score	Overall Score
Technical	120	<i>[Insert total Technical Score]</i>	<i>[Total Technical Score achieved as a % of total Technical Score available]</i>	0.60	<i>[% of Total Technical Score Achieved multiplied by 0.70]</i>
Financial	100	<i>[Insert total Financial Score]</i>	<i>[Total Financial Score achieved as a % of total Financial Score available]</i>	0.30	<i>[% of Total Financial Score Achieved multiplied by 0.15]</i>
Commercial	10	<i>[Insert total Commercial Score]</i>	<i>[Total Commercial Score achieved as a % of total Commercial Score available]</i>	0.10	<i>[% of Total Commercial Score Achieved multiplied by 0.15]</i>
Final Mark					<i>[calculated by an addition of the above overall scores]</i>



Special Notices and Instructions to P2G/0452 – Manufacture of Puma MK2 Aircraft Covers

## **1 Limitation of a Contractors Liability**

1.1 The Authority has carefully considered the risk profile associated with the potential requirement and tenderers are advised that, any request by a tenderer to limit their liability against the contract (other than under the terms of DEFCON 76 – Contractor's Personnel at Government Establishments) will result in their tender being deemed commercially non-compliant and rejected.

1.2 Under Defcon 76 the onus is on you to seek (if any) a Limitation of Contractors Liability and provide the necessary evidence to support your case. You must demonstrate that it is Value for Money for the MOD for you to limit your liability for certain risks.

1.3 If a Defcon 76 Limit of Liability is proposed you must submit proof of your maximum level of Public Liability Insurance.

## **2 Measuring Day for the Manufacture of Puma MK2 Aircraft Covers.**

2.1 There is a requirement for information from any contractor coming to RAF Benson to measure the Puma HC Mk2 to enable them to submit a tender for covers provision. This information will enable access on site and confirmation of the suitability of equipment that is intended for use RAF Besnon.

2.2. Requested information at Appendix 1 to Enclosure 4 to Defform 47 must be received **25 calendar days** after the issue date of the ITT. On sending the requested information to the project team the supplier will also be required to telephone DESP2G-EngGrad 2 ext 030679 34789 or DESP2G-PumaEngAv2 ext 030679 82464 to book a time slot to measure the Aircraft. The date for measuring the Aircraft will be from Monday 11<sup>th</sup> May 2015 to Friday 15<sup>th</sup> May 2015, time slots will be allocated on a first come first served basis. Failure to supply the required information requested herein and book your time slot by the end of the 25 calendar day time frame will disqualify you from the ITT process and access to the aircraft will not be granted.

2.3. The information requested herein should be sent to [DESP2G-EngGrad2@mod.uk](mailto:DESP2G-EngGrad2@mod.uk) and [DESP2G-PumaEngAv2@mod.uk](mailto:DESP2G-PumaEngAv2@mod.uk). A confirmation email will be returned as receipt of this information within 48 hours. It is the contractors' responsibility to ensure that the required information has been received before the deadline, the Project Team take no responsibility for missing or un-received emails that lead to disqualification from the ITT process.

2.4. Contractors are required to provide the information detailed below in a format that is clear and legible, easily identifying which member of staff the information relates to:

- a. **Staff Names:** Please provide the full names of all members of staff that you will be sending to the site.
- b. **Staff Dates of Birth:** Please provide the full dates of birth of all members of staff that you will be sending to the site in the format DD/MM/YYYY.
- c. **Staff Nationalities:** Please provide the nationality of your members of staff.
- d. **Passport Details:** Please provide the passport number and a copy of the photo id section of the passport of your staff. In the event a passport is not or has not been possessed by your member of staff a photo driving licence will be accepted.
- e. **Company ID Documents and Details:** Please provide copies of any company identity documents you allocate your staff and any company specific employee numbers they have.
- f. **Vehicle Details (if available):** Please provide the number of vehicles you will be bringing on site, including their make, model, colour and registration details.

2.5 In order to assist the process of passing on these details Appendix 1 to Enclosure 4 to Defform 47 has been provided for completion.

2.6 Contractors **must also** inform by email [DESP2G-EngGrad2@mod.uk](mailto:DESP2G-EngGrad2@mod.uk) and [DESP2G-PumaEngAv2@mod.uk](mailto:DESP2G-PumaEngAv2@mod.uk) what equipment they will be using to measure the aircraft. If this is laser measuring equipment then you must also inform the Project Team of the class of laser it is categorised as. We will endeavour to support the use of your desired equipment but the ability to support the use of lasers outside category 1 and 2 (not 1M or 2M) cannot be guaranteed.

2.7 We will provide limited resources to you as the contractor. These resources are laid out in Annex B. Any other resources you require can be requested through the project team contacts above. However, we are under no obligation to provide any resources other than those we commit to in Annex B.

2.8 It is your responsibility to ensure all the required information is provided and received by the relevant departments. Responses should be received by the deadline described in above.

**P2G/0452 – Manufacture of Puma MK2 Aircraft Covers**

Company Name: .....

Company Representative: .....

Contact Number: .....

Details of staff you will be bringing on site:

	<b>Surname</b>	<b>Forename(s)</b>	<b>Date of Birth</b>	<b>Passport No / Driving License No</b>	<b>Company ID Details</b>
<b>1</b>					
<b>2</b>					
<b>3</b>					
<b>4</b>					
<b>5</b>					
<b>6</b>					
<b>7</b>					

Details of Vehicles you will be bringing on site:

	<b>Make</b>	<b>Model</b>	<b>Colour</b>	<b>Registration</b>
<b>1</b>				
<b>2</b>				
<b>3</b>				

Please attach copies of your employees' passports / driving licences and company ID.

## Appendix B to Special Notices and Instructions

1. MoD provision for contractors attending aircraft dimensioning days will be limited to the following items:
  - a. Space – We will provide an area around the aircraft in which you can work. That area will be approximately 5 meters from the main rotor head in all directions
  - b. Fenced off working area – We will ensure the space which you are given to work in is fenced off to prevent RAF personnel encroaching on your work area.
  - c. Plug 3 pin – We will provide access to a 3 pin plug with a 240v power supply **on request.**
  - d. Staging / steps – We will provide either staging or steps with a platform at height to assist measuring the aircraft at height. Under no circumstances will you be allowed to use your own ladders and place them against the aircraft. You are responsible for providing your own PPE should you wish to work at height.
  - e. A Puma HC Mk2 – The helicopter will be provided with all compartments closed (eg. Engine covers/doors/gearbox cover), wheels down and parked on the ground.
  - f. Future Modification Pack – We will provide a pack with the known sizes and locations of modifications that will be put onto the aircraft, but that are not yet embodied on the aircraft. This pack can then be used to accommodate those modifications as provision for them is part of the requirement.
2. If further equipment is required it can be requested however the Project Team gives no guarantee that we will be able to provide it. In these circumstances it is your responsibility to source the equipment you need.

Not to be used for General  
Correspondence with the  
Ministry

Affix  
Stamp  
Here

THE TENDER BOARD  
Commercial Project Enabling Team  
Defence Equipment and Support  
The Central Gatehouse/VCP  
MOD Abbey Wood South  
Bristol BS34 8JH

**Tender No: P2G/0452**  
**Due 1200 Hours 15<sup>th</sup> June 2015**

DEFFORM 28ABW  
Edn 6/09

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**Tender No: P2G/0452**  
**Due 1200 Hours 15<sup>th</sup> June 2015**

DEFFORM 28ABW  
Edn 6/09

**THE ELECTRONIC TRANSACTIONS AGREEMENT**

**Between**

**And**

**SECRETARY OF STATE FOR DEFENCE**

**MINISTRY OF DEFENCE**  
**Electronic Transactions Agreement**

THIS AGREEMENT comprises the General Clauses for electronic transactions.

The terms of this Agreement shall govern the conduct and methods of operation between the parties in relation to the electronic exchange of data for the purposes of or associated with the supply of Articles and/or Services pursuant to those contracts which reference it. Except as otherwise provided in the appended terms, the terms do not apply to the substance of the data transfer. This Agreement shall have the date of and be effective from the date of the last signature hereunder.

**AGREED**

For and on behalf of:

For and on behalf of:

**Secretary of State for Defence**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Whose Registered Office is at:

Whose Address is:

Agreement reference number:

## **Contents**

### **Electronic Transactions**

#### **General Clauses**

<b>CLAUSE 1</b>	Definitions
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<b>CLAUSE 4</b>	Authenticity of Messages
<b>CLAUSE 5</b>	Integrity of Messages
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 <b>Annex A</b>	 Message Implementation Guidelines (MIGs) and additional requirements and information applicable to this Agreement

## 1. Definitions

- a. In this Agreement, in addition to the definitions in DEFCON 501:
- i. **"Acknowledgement of Receipt"** means the procedure by which, on receipt of a Message, the logical presentation or form are checked, and a corresponding acknowledgement or rejection is sent by the receiver;
  - ii. **"Adopted Protocol"** means the method(s) for the Interchange of Messages between the respective Parties and an intermediary appointed pursuant to Clause 8 for the presentation and structuring of the transmission of Messages as defined in Annex A
  - iii. **"Associated Data"** means that data which accompanies a Message but may not be in the Adopted Protocol; such data may include header information, protective markings, designations, Electronic Signatures, date and time of transmission and of receipt;
  - iv. **"Data"** means all Messages and Associated Data transmitted, received or stored in a digital form;
  - v. **"Data File"** means a single record or collection of data records that are logically related to each other, and are handled as a unit;
  - vi. **"Data Log"** means a complete record of all Data Interchanged representing the Messages and their Associated Data between the parties;
  - vii. **"Purchase to Payment Gateway" or "ePurchasing"** mean the service provided by the party under contract to the Authority to manage the electronic receipt, transmission and translation of messages exchanged between the Authority and its suppliers;
  - viii. **"Electronic Signature"** means anything in electronic or digital form incorporated into or otherwise logically associated with an electronic communication for the purpose of establishing the authenticity of the communication or its integrity, or both;
  - ix. **"Expunge"** means the removal of the information contained in a Message document such that the content of the Message is removed from the system in a manner which precludes its retrieval (but with no obligation in respect of the record of its receipt);
  - x. **"Functional Acknowledgement"** means an acknowledgement Message by the receiving party's computer software application which automatically confirms the receipt of a Message at the moment of receipt;
  - xi. **"Interchange"** means the electronic exchange of Data between the Parties using the Adopted Protocol;



- xii. "**Message**" means Data structured in accordance with the Adopted Protocol and transmitted electronically between the parties including where the context admits any part of such Data.

## **2. Scope**

- a. The Messages to be exchanged under this Agreement are detailed in the Message Implementation Guidelines referred to in Annex A, which also includes guidance on how these should be profiled.
- b. This Agreement shall apply to all Messages passed between the parties using the Adopted Protocol. The parties agree that all such Messages shall be transmitted in accordance with the provisions of this Agreement.
- c. The parties may agree additional or alternative terms to reflect additional or different requirements which they may have for the Interchange of Messages, which terms shall form part of this Agreement.

## **3. Security of Data**

- a. Each of the parties shall:
  - i. ensure as far as reasonably practicable, that Data is properly stored, is not accessible to unauthorised persons, is not altered, lost or destroyed and is capable of being retrieved only by properly authorised persons;
  - ii. subject to the provisions of Sub-Clause 8.a. ensure that, in addition to any security, proprietary and other information disclosure provision contained in the Contract, Messages and Associated Data are maintained in confidence, are not disclosed or transmitted to any unauthorised person and are not used for any purpose other than that communicated by the sending party or permitted by the Contract;
  - iii. protect further transmission to the same degree as the originally transmitted Message and Associated Data when further transmissions of Messages and Associated Data are permitted by the Contract or expressly authorised by the sending party.
- b. The sending party shall ensure that Messages are marked in accordance with the requirements of the Contract. If a further transmission is made pursuant to Sub-Clause 3. a. iii. the sender shall ensure that such markings are repeated in the further transmission.
- c. The parties may apply special protection to Messages by encryption or by other agreed means, and may apply designations to the Messages for protective Interchange, handling and storage procedures. Unless the parties otherwise agree, the party receiving a Message so protected or designated shall use at least the same level of protection and protective procedures for any further transmission of the Message and its Associated Data for all responses to the Message and for all other communications by Interchange or otherwise to any other person relating to the Message.

- d. If either party becomes aware of a security breach or breach of confidence in relation to any Message or in relation to its procedures or systems (including, without limitation, unauthorised access to their systems for generation, authentication, authorisation, processing, transmission, storage, protection and file management of Messages) then it shall immediately inform the other party of such breach. On being informed or becoming aware of a breach the party concerned shall:
  - i. immediately investigate the cause, effect and extent of such breach;
  - ii. report the results of the investigation to the other party;
  - iii. use all reasonable endeavours to rectify the cause of such breach.
- e. Each party shall ensure that the contents of Messages that are sent or received are not inconsistent with the law, the application of which could restrict the content of a Message or limit its use, and shall take all necessary measures to inform without delay the other party if such an inconsistency arises.

#### **4. Authenticity of Messages**

- a. Each Message shall identify the sending party and receiving party and its authenticity shall be verified by the means specified in the Adopted Protocol.
- b. The parties agree not to contest the authenticity, admissibility or enforceability of Messages under the provisions of any applicable law relating to whether certain agreements are in writing and signed by the party to be bound thereby. Messages, when printed from electronic files and records established and maintained in the normal course of business will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form.

#### **5. Integrity of Messages**

- a. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and, subject to Sub-Clauses 5.b. 5.d. and 15, shall be liable for the direct consequences of any failure to perform its obligations under this Sub-Clause 5.a.
- b. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.
- c. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. Any liability of the sending party which would otherwise accrue

from its failure to comply with the provisions of this Sub-Clause 5.c. shall not accrue if Sub-Clause 5.d. applies.

- d. Notwithstanding Sub-Clauses 5.a. and 5.c. the sending party shall not be liable for the consequences of a corrupted or incorrect transmission or any failure to re-transmit if the error is or should in all the circumstances be reasonably obvious to the receiving party. In such event the receiving party shall immediately notify the sending party thereof.
- e. If the receiving party has reason to believe that a Message is not intended for them they shall notify the sending party and if so requested by the sending party shall, so far as is reasonably possible, Expunge from its system the information contained in such Message.

## **6. Acknowledgement of Receipt of Messages**

- a. Except where the Interchange of Messages takes place solely within ePurchasing, immediately upon receipt of a Message at its receipt computer, the receiving party's receipt computer shall automatically transmit a Functional Acknowledgement in return and additionally the sender may request an Acknowledgement of Receipt.
- b. An Acknowledgement of Receipt is required unless stipulated in the Contract to the contrary.
- c. Where an Acknowledgement of Receipt is required, the receiver of the Message to be acknowledged shall ensure that the acknowledgement or a rejection is sent within the time limit specified in the Contract or in Annex A to this Agreement if applicable or, if no limit is specified, within a reasonable period of time.
- d. Where an Acknowledgement of Receipt is required, if the sender does not receive the Acknowledgement of Receipt or rejection within the time limit applicable, or, if no time limit is specified, within a reasonable time, the sender may, upon giving notice to the receiver, treat the message as having no force or effect.
- e. Acknowledgement in accordance with this clause shall not be deemed to constitute acceptance of any offer contained in any Message. Acceptance of an offer contained in any Message which is intended to create a legally binding obligation shall be in accordance with the provisions of the Contract.
- f. A Message shall be understood to have been received from the sender:
  - i. if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or
  - ii. if transmitted at any other time, at 09.00 on the first business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or
  - iii. if the Interchange of Messages takes place solely within ePurchasing, at the moment a Message is completed by pressing the submit button if transmitted between 09.00

and 17.00 hours on a business day (recipient's time) or if transmitted at any other time, at 09.00 on the first business day (recipient's time).

## **7. Storage of Data**

- a. Each party shall maintain a Data Log or shall cause an intermediary to maintain a Data Log recording all Messages and Associated Data as sent and received without modification.
- b. The Data Logs may be maintained as Data Files on computer or by other suitable means provided that a copy of the Data can be readily retrieved and presented in human readable form. Procedures to enable a secure means of archiving Data Logs shall be detailed in the Contract or agreed between the parties.
- c. Each party shall be responsible for making such arrangements as may be necessary for the Data contained in its Data Log to be prepared as a correct record of the Messages and Associated Data as sent or received by that party. In the event that a party has destroyed its Data Log, the other party shall have no obligation to furnish it with any information recorded in its Data Log.
- d. Each party shall ensure that:
  - i. it has appointed an identifiable person responsible for the operation and management of that party's data processing system concerned with the interchange of Messages; and
  - ii. the person responsible for the data processing system concerned with the Interchange of Messages, or such other person as may be agreed by the parties or required by law, shall certify that the Data Log and any reproduction made from it is correct and complete.

## **8. Intermediaries**

- a. Subject to Clause 15 if either party uses the services of an intermediary to transmit, log, store or process Messages, that party shall be responsible for any acts, failures or omissions by that intermediary in its provision of the said services as though they were his own acts, failures or omissions. The Authority shall be liable as between the Authority and the Contractor for any acts, failures or omissions of ePurchasing in its provision of the services of an intermediary as though they were the acts, failures or omissions of the Authority.
- b. Any party using an intermediary shall ensure that it is a contractual responsibility of the intermediary that no change in the substantive data content of the Messages to be transmitted is made and that such Messages are not disclosed to any unauthorised person.

## **9. Term and Termination**

- a. This Agreement shall take effect as of the date of last signature and shall remain in full force and effect until terminated by either party upon giving one month's notice to the other. Any termination of this Agreement shall not affect contracts that call it up by reference prior to that termination.
- b. Notwithstanding termination for any reason, Clauses 3, 7 and 8 shall survive termination of this Agreement.
- c. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination.

## **10. Interruption of Service**

- a. The parties acknowledge that service may be interrupted at times during the course of this Agreement. In such circumstances, the parties shall immediately consult each other on the use of alternative forms of communication to be used, including facsimile, telephone or paper. Any alternative forms of communication shall not be controlled by this Agreement.
- b. Applicable only in the absence of a relevant clause in the Contract:
  - i. Subject to Sub-Clause 10. a., a party shall not be deemed to be in breach of this Agreement by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any interruption of service or incident of Force Majeure as described in Sub-Clause 10.b.iii. below, of which he has notified the other party without delay
  - ii. The time for performance of that obligation shall then be extended accordingly. Sub-Clause 10. b. i. shall not operate so as to relieve liability for any matter which is a breach of Clause 3 of this Agreement
  - iii. For the purposes of this Agreement, Force Majeure means, in relation to either party, any circumstances beyond the reasonable control of that party.

## **11. Invalidity and Severability**

In the event of a conflict between any provision of this Agreement and any law, regulation or decree affecting this Agreement, the provisions of this Agreement so affected shall be regarded as null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree but otherwise it shall not render null and void other provisions of this Agreement.

## **12. Notices**

The provisions of DEFCON 526 shall apply.

### **13. Precedence**

In the event of any conflict between the terms of this Agreement and the Contract, then the terms of the Contract shall prevail in relation to the substance of the Messages in connection with the Contract.

### **14. Virus Control**

Each party and its intermediary (if any) shall operate at all times a virus control check for all Interchange of Messages.

### **15. Limit of Liability**

- a. Each party agrees that, in relation to any claim, or series of connected claims, including claims for negligence but excluding claims resulting from wilful misconduct, arising from any delay or omission or error in the electronic transmission or receipt of any message pursuant to this Agreement, the liability of either party to the other shall be limited to £10,000 (exclusive of VAT), or where the Contract provides otherwise, to such other amount as is specified in the Contract.
- b. For the avoidance of doubt, liability in relation to any claim arising under the Contract shall be determined in accordance with the Contract.
- c. In the event that a delay, omission or error as referred to in Clause 15a occurs, which causes a delay in the performance of an obligation by either party under the Contract, the period for the performance of that obligation by the affected party shall be extended by a period of time equal to the period of any such delay, omission or error.

### **16. Entire Agreement**

This Agreement, including Annex A and any documents expressly referred to in this Agreement, represents the entire agreement between the parties and supersedes all other agreements oral or written, and all other communications between the parties relating to the subject matter hereof provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.

**Message Implementation Guidelines (MIGs)**

The current and applicable MIG as approved by the MOD within this agreement can be viewed on the D2BTrade Website: <http://www.d2btrade.com>.