

Clause 47 - Limitation of Contractor's Liability (SC2)

Contents

LIMITATIONS ON LIABILITY	2
Unlimited liabilities	2
Financial limits	2
Consequential loss	3
Invalidity.....	4
Third party claims or losses.....	4
No double recovery.....	5

47. LIMITATIONS ON LIABILITY

Unlimited liabilities

- 47.1 Neither Party limits its liability for:
- 47.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 47.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 47.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 47.1.4 any liability to the extent it cannot be limited or excluded by law.
- 47.2 The financial caps on the Contractor's liability set out in Clause 47.4 below shall not apply to the following:
- 47.2.1 for any indemnity given by the Contractor to the Authority under this Contract;
 - 47.2.2 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and condition 34 (Third Party IP – Rights and Restrictions);
 - 47.2.3 the Contractor's indemnity in relation to TUPE;
 - 47.2.4 breach by the Contractor of DEFCON 532B and Data Protection Legislation.
- 47.3 The financial caps on the Authority's liability set out in Clause 47.5 below shall not apply to the following:
- 47.3.1 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to condition 42; and
 - 47.3.2 the indemnity given by the Authority in relation to TUPE shall be unlimited.

Financial limits

- 47.4 Subject to Clauses 47.1 and 47.2 and to the maximum extent permitted by Law:
- 47.4.1 throughout the Term, the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - (i.) in respect of DEFCON 76 (SC2) £ Unlimited in aggregate;
 - (ii.) in respect of condition 43b £ Unlimited in aggregate;
 - (iii.) in respect of DEFCON 611 (SC2) £ Unlimited in aggregate; and
 - (iv.) in respect of condition 28d £ Unlimited in aggregate;

47.4.2 without limiting Clause 47.4.1 and subject always to Clauses 47.1, 47.2, 47.2.5 and 47.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £ Unlimited in aggregate.

47.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 47.4.1 and 47.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 47.4.1 and 47.4.2 of this Contract.

47.5 Subject to Clauses 47.1, 47.3, 47.3.3 and 47.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

47.6 Clause 47.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

47.7 Subject to Clauses 47.1, 47.2 and 47.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

47.7.1 indirect loss or damage;

47.7.2 special loss or damage;

47.7.3 consequential loss or damage;

47.7.4 loss of profits (whether direct or indirect);

47.7.5 loss of turnover (whether direct or indirect);

47.7.6 loss of business opportunities (whether direct or indirect); or 47.7.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

47.8 The provisions of Clause 47.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

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

(i.) to any third party;

(ii.) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

- (iii.) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 47.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- 47.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
- 47.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 47.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
- 47.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- 47.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 47.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 47.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- 47.9 If any limitation or provision contained or expressly referred to in this Clause 47 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 47.

Third party claims or losses

- 47.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and condition 34 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

- 47.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
- 47.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

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