



Ministry  
of Defence

**Mrs Ailsa Bull**

**Def Comrcl CC-Navy 20**

MOD Commercial  
Room 303, 3rd Floor, Bldg 1/080  
PP73A, Jago Road  
HMNB Portsmouth  
Hants

PO1 3LU

Telephone [MOD]: 02392 726810

Facsimile [MOD]: 02392 727776

E-mail: DefComrclCC-Navy20@mod.uk

Your Ref:

Our Ref: FLEET/00347

6<sup>th</sup> May 2015

Dear Sirs

**Invitation to Tender**  
**Reference No. FLEET/00347**

1. You are invited to tender to replace HPAC at Wyke Regis in competition in accordance with the attached documentation.
2. The indicative date for the contract award decision is 10<sup>th</sup> July 2015, please note that is an indicative date and may change.
3. You must submit your Tender to arrive no later than 27<sup>th</sup> May 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 faithfully

**Ailsa Bull**  
**Def Comrcl CC-Navy 20**

1.1 **List of Suppliers Invited to Submit a Tender for ITT No. FLEET/00347**

<b>Supplier Name</b>	<b>Supplier Address and Phone No</b>
MAXAURA LTD	Unit 3 Systems House 94 Kitchener Road High Wycombe HP11 2SW
CENTRAL COMPRESSOR CONSULTANTS LIMITED	Unit 15 Daniels Trading Estate Bath Road Stroud GL5 3TJ
BABCOCK INTERNATIONAL GROUP PLC	Lorne Road Larbet Stirlingshire FX5 4AT
DERWENT JAMES LTD	12 Darley Abbey Mills Darley Abbey Derby DE22 1DZ
EXPRESS PIPEWORK SYSTEMS LIMITED	134 CLYDEHOLM ROAD Whiteinch Glasgow G14 0QQ
BAUER KOMPRESSOREN UK LTD	Unit 410 Haydock Lane Haydock Industrial Estate St Helens, Merseyside WA11 9TH





# Ministry of Defence

**MOD Commercial Team**

**Contract No: FLEET/00347**

**For:**

**DDS028-14 To replace HPAC at Wyke Regis**

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

**And**

**Contractor Name and Address**

**Team Name and address:**

Room 303, 3rd Floor, Bldg 1/080  
PP73A, Jago Road  
HMNB Portsmouth  
Hants  
PO1 3LU

**Email Address:**

**Telephone Number: 02392 726810**  
**Facsimile Number: 02392 727776**

**Email Address:**

**Telephone Number:**  
**Facsimile Number:**

## 2 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 DEFCON's are added to these Conditions);</b>
<b>Authority</b>	means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
<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>	means any day excluding: <ol style="list-style-type: none"><li>Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;</li><li>privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and</li><li>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></ol>
<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 clause 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> <ol style="list-style-type: none"><li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li><li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li></ol> <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>DECS P2P</b>	means the MOD electronic ordering, receipting and payment system;
<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 clause 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>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>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>Packaging</b>	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;  Noun. The materials and components used for the preparation of the articles for transportation and storage in accordance with the Contract;
<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>	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: <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> it excludes sawmill co-products;

<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);
2.1.1 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>
<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.

### 3 Schedule 2 - Schedule of Requirements for Contract No: FLEET/00347

For the DDS028-14 To replace HPAC at Wyke Regis

<b>Contractor Deliverables</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	N/A		To replace existing High Pressure Air Compressor located at Wyke Regis with new as detailed in SOR ESO/20140209	XX	None		1		
2	N/A		Cylinder Charging Panel to meet specification as detailed in SOR	XX	None		1		
								<b>Total Firm Price</b>	

Item Number	Consignee Address (XY code only)
	Wyke Regis Training Area, DIO Service Delivery Training SW, Wyke Regis, Weymouth, Dorset, DT4 9HH

**Schedule 3 Contract Data Sheet for Contract No: FLEET/00347**

<p><b>Clause A9 Governing Law</b></p>	<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 irrevocably appointed for Foreign Contractors in accordance with Clause A9.f (if applicable) are as follows:</p>
<p><b>Clause A22 Termination for Convenience</b></p>	<p>The Notice period for terminating the Contract shall be twenty (20) Business Days.</p>
<p><b>Clause A24 Contract Period</b></p>	<p>The Contract expiry date shall be: 1 year from acceptance of delivery.</p>
<p><b>Clause B1.a.(2) Contractor's Obligations – Quality Assurance</b></p>	<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>If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</p> <p><b>Other Quality Assurance Requirements:</b></p> <p>AQAP 2120</p>
<p><b>Clause B6 Marking of Contractor Deliverables</b></p>	<p>Special Marking requirements:</p>
<p><b>Clause B8 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances</b></p>	<p>A completed Schedule 6 (Hazardous Articles, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>a) The Authority's Representative (Commercial)</p> <p>b) <a href="mailto:DSEA-Land-MovTpt-DGHSIS@mod.uk">DSEA-Land-MovTpt-DGHSIS@mod.uk</a></p> <p>or: if only a hardcopy is available to:</p> <p>a) The Authority's Representative (Commercial)</p>



	To be Collected by the Authority (See Box F1.c)
<b>Clause F1.b (Delivery by the Contractor)</b> (for Schedule 2 Items)	<p>(Where applicable, see Box F1.a above)</p> <p>Special Delivery Instructions (Clause F1.b.(2)) :</p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.b.(3)):</p> <p>Line Items                      MOD Form 640</p> <p>Line Items                      DEFFORM 129J</p> <p>Line Items                      Delivery Note</p>
<b>Clause F1.c (Collection by the Authority)</b> (for Schedule 2 Items)	<p>(Where applicable, see Box F1.a above)</p> <p>Special Collection Instructions (Clause F1.c.(2)):</p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.c.(3)):</p> <p>Line Items                      ALL MOD Form 640</p> <p>Line Items                      DEFFORM 129J</p> <p>Line Items                      Delivery Note</p> <p>Consignor Address(F1.c.(4)) :</p> <p>Line Items                      Address</p> <p>Line Items                      Address</p> <p>Consignee Address Details (for the purposes of Clause B7.b.(1)):</p> <p>Line Items                      Address Details</p> <p>Line Items                      Address Details</p> <p>Line Items                      Address Details</p>
<b>Clause F3.b Rejection</b> <b>Note: If no period is inserted here the time period shall be twenty (20) Business days)</b>	Time limit for rejection of the Contractor Deliverables shall be twenty (20) Business Days.
<b>Clause F5 Self to Self Delivery</b>	Is Self to Self Delivery required:

	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If Yes, Delivery address applicable:</p>
<b>Clause G1.a Payment</b>	<p>DEFFORM 30 Agreement refers (if applicable)</p> <p>Reference</p> <p>Date</p>
<b>Clause G1.c.(2) and G1.c.(3) Payment</b> (for Schedule 2 Items)	<p>Payment is to be enabled by:</p> <p>Line Items ALL DECS P2P refers</p> <p>Line Items MOD Form 640 refers</p> <p>Line Items AG173 refers</p> <p>(Address to which MOD Form 640 or AG173 (approval for payment) should be sent if different from Consignee):</p>
<b>Clause H1.a Progress Monitoring</b>	<p>The Contractor shall be required to attend the following meetings:</p> <p>Type:</p> <p>Frequency:,</p> <p>Location:,</p>
<b>Clause H1.b Progress Reports</b>	<p>The Contractor is required to submit the following Reports:</p> <p>Type:</p> <p>Frequency:</p> <p>Method of Delivery:</p> <p>Delivery Address:</p>
<b>Clause H2.b Authority's Representatives</b>	<p>The Authority's Representatives for the Contract are as follows:</p> <p>Commercial: Mrs Ailsa Bull</p> <p>Project Manager: Mr Nick Carter</p> <p>Payment: Mr Andy Kimber</p>
<b>Clause H3.a.(5) Notices</b>	<p>Notices served under the Contract can be transmitted by electronic mail</p>

	Yes <input 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>

DEFFORM 111  
(Edn 08/14)

## Appendix - Addresses and Other Information

**1. Commercial Officer**  
Def Comrcl CC Navy 14  
Room 303 Jago Road  
Building 1/080 PP73a  
HMNB Portsmouth  
Hants PO1 3LU

Email: Defcomrclcc-navy14@mod.uk

**2. Project Manager, Equipment Support Manager or PT Leader**

LT D M Valvona  
Head of Engineering  
Gunwharf Building  
Defence Diving School  
West Bund Road  
Cosham  
PO6 4TT

Email: NAVYOPTRG-MWSDDSESO@mod.uk

**3. Packaging Design Authority**

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

**4. (a) Supply/Support Management Branch or Order Manager:**

Tel No:

(b) U.I.N. N5665C

**5. Drawings/Specifications are available from****6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to**

(where no address is shown the mauve copy should be destroyed)

**7. Quality Assurance Representative:**

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

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]

**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:

Wyke Regis Training Area  
DIO Service Delivery Training SW  
Weymouth  
DT4 9HH

**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 Tel 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837 [www.freightcollection.com](http://www.freightcollection.com)

**11The 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#invoice-processing>

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

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site  
Lower Arcott  
Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)  
**Applications via fax or email:** [DESLCSLs-OpFormsandPubs@mod.uk](mailto:DESLCSLs-OpFormsandPubs@mod.uk)

**NOTES**

**1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12. , All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.

**2.\* Many DEFCONs and DEFFORMs** can also be obtained from the MOD Internet Website;  
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

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: 

Outside the scope	<input type="checkbox"/>	Item Nos	<input type="text"/>
Exempt	<input type="checkbox"/>	Item Nos	<input type="text"/>
Taxable Zero Rate	<input type="checkbox"/>	Item Nos	<input type="text"/>
Taxable - Std Rate	<input checked="" type="checkbox"/>	Item Nos	All

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

Finance Branch	NAVY FIN-TRG FOSNNI AV BUDMAN
Local Project Code	
Requisition No	92729
Proj Man Reference	DSMarE-ESSO1
Place of manufacture	N/A
Place of packaging	N/A
Contractor's Tel	N/A



**Schedule 4 - Contract Change Process Procedure (i.a.w. clause A.2.b)  
for Contract No: FLEET/00347**

**1. Authority Changes**

- i. The Authority has the right to propose changes ("Authority Changes") to the Contractor Deliverables in accordance with this Schedule 4. The Authority shall not propose an Authority Change which:
- (1) would require the Contractor Deliverables to be performed in a way that infringes any Legislation or is inconsistent with good industry practice;
  - (2) would materially and adversely affect the health and safety of any person;
  - (3) would require the Contractor to implement the change to the Contractor Deliverables in an unreasonable period of time;
  - (4) would (if implemented) materially and adversely change the nature of this Contract; and / or
  - (5) the Authority does not have the legal power or capacity to require the implementation of.
- ii. If the Authority requires an Authority Change, it must serve a Notice (an "Authority Notice of Change") on the Contractor.

**2. Authority Changes – Notice of Change**

The Authority Notice of Change shall:

- a. set out the change in Contractor Deliverables required in sufficient detail to enable the Contractor to calculate and provide a change proposal identifying the change in Contract Price as a result of the change in accordance with clause 3 below (the "Change Proposal"); and
- b. require the Contractor to provide the Authority with the Change Proposal within fifteen (15) Business Days of receipt of the Authority Notice of Change.

**3. Authority Changes – Change Proposal**

As soon as practicable and in any event within fifteen (15) Business Days after having received the Authority Notice of Change, the Contractor shall deliver to the Authority the Change Proposal. The Change Proposal shall include the opinion of the Contractor on:

- a. whether relief from compliance with obligations is required, including the obligations of the Contractor to achieve any Delivery Date or other date set out in the Contract, and meet the requirements set out in the Schedule of Requirements during the implementation of the Authority Change;
- b. any impact on the fulfilment of the Contractor Deliverables; and
- c. any amendment required to this Contract as a result of the Authority Change.

**4. Authority Changes – Process and Implementation**

- a. As soon as practicable after the Authority receives the Change Proposal, the Parties shall discuss and agree the issues set out in the Change Proposal.
- b. In 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 after receipt of such modification, notify the Authority of any consequential changes to the Change Proposal.
- c. As soon as practicable after the contents of the Change Proposal have been agreed or otherwise determined pursuant to Clause A21 (Dispute Resolution), the Authority shall:
  - (1) confirm in writing the Change Proposal (as modified); or
  - (2) withdraw the Authority Notice of Change.
- d. If the Authority does not confirm in writing the Change Proposal (as modified) within thirty (30) Business Days of the contents of the Change Proposal having been agreed in accordance with clause 7 below or determined pursuant to clause 8 below, then the Authority Notice of Change shall be deemed to have been withdrawn.

e. In the event that the Change Proposal has been confirmed by the Authority, then the adjustment to any amount payable by the Authority to the Contractor in respect of any Contractor Deliverables to which the Authority Change relates shall place the Contractor in no better and no worse a financial position than would be the case had the Authority Change not been implemented.

## **5. Contractor Changes**

If the Contractor wishes to introduce a change (a "Contractor Change") to the Contractor Deliverables, it must serve a Notice (a "Contractor Notice of Change") on the Authority.

## **6. Contractor Changes – Notice of Change**

The Contractor Notice of Change must:

- a. set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
- b. specify the Contractor's reasons for proposing the Contractor Change;
- c. request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result;
- d. indicate any implications of the Contractor Change; in particular, whether a variation to the Contract Price by the Authority to the Contractor under this Contract is proposed (and, if so, give a detailed breakdown of such proposed variation); and
- e. indicate if there are any dates by which a decision by the Authority is critical.

## **7. Contractor Changes – Process and Implementation**

a. The Authority shall evaluate the proposed Contractor Change in good faith, taking into account all relevant issues, including whether:

- (1) a variation to the Contract Price payable by the Authority to the Contractor under this Contract will occur;
- (2) the Contractor Change affects the quality of Delivery of the Contractor Deliverables or the likelihood of successful Delivery of the Contractor Deliverables; and
- (3) the Contractor Change will interfere with the relationship of the Authority with third parties.

b. As soon as practicable after receiving the Contractor Notice of Change, the Parties shall discuss the matter referred to in it. During such discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.

c. If the Authority accepts the Contractor Notice of Change (with or without modification), the relevant change to the Contractor Deliverables shall be implemented within twenty (20) Business Days of the Authority's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall amend this Contract to give effect to the Contractor Change.

d. If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.

Unless the Authority's acceptance specifically agrees to a variation to Contract Price by the Authority to the Contractor under this Contract, there shall be no increase in the Contract Price under this Contract as a result of a Contractor Change.

## Schedule 5 – Export Licence (i.a.w. clause A.17.g) for Contract No: FLEET/00347

### 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 clause D1 (Infringement or Alleged Infringement) 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 above:
- a. the First Party may, or at the request of the Second Party undertakes 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

clause D1 (Infringement or Alleged Infringement) 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 clause A22 (Termination for Convenience) of the First Party's Conditions of Contract.

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 - Hazard Articles, Materials or Substances Supplied under the  
Contract: Data Requirements**

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

Contract No: FLEET/00347

Contract Title: DDS028-14 To replace HPAC at Wyke Regis

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 Clause B8 of the Standardised Contract 2 Conditions

Contractor's Signature:

Name:

Job Title:

Date:

\* check box () as appropriate

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To be completed by the Authority

DMC:

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)  
Defence Safety and Environment Authority (DSEA)  
HQ DE&S  
NH3 Cedar 2B, # 3246  
MOD Abbey Wood (South)  
Bristol, BS34 8JH

**Schedule 7 – Timber and Wood - Derived Products Supplied under the Contract:  
Data Requirements**

**Contract Num: FLEET/00347**

**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 (iaw Clause F2) for Contract No:FLEET/00347**

**4 Schedule 9 Contractor's Commercially Sensitive  
Information Form**  
(i.a.w clause A14) for Contract No:FLEET/00347

Not to be used for General  
Correspondence with the  
Ministry

Affix  
Stamp  
Here

THE TENDER BOARD  
Def Comrcl CC-Navy 20  
Room 303, 3<sup>rd</sup> Floor, Bldg 1/080  
PP73A  
HM Naval Base Portsmouth  
Hampshire PO1 3LU

**Tender No: FLEET/00347  
Due 1000 Hours 08<sup>th</sup> June 2015**

DEFFORM 28

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**Tender No: FLEET/00347  
Due 1000 Hours 08<sup>th</sup> June 2015**

DEFFORM 28

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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: **Ailsa Bull**

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

Position: **Commercial Officer**

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

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

Whose Registered Office is at:

Whose Address is:

Room 303, Jago Road  
Building 1/080, PP73a  
HMNB Portsmouth  
Hants  
PO1 3LU

Agreement reference number:

**Contents**  
**Electronic Transactions**  
**General Clauses**

<b>CLAUSE 1</b>	Definitions
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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>.