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## **1 Definitions**

In the Contract:

<b>AG173</b>	means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
<b>AG210</b>	means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;
<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 the Purchase Order who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Terms and Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) as stated in the Purchase Order;
<b>Business Day</b>	means any day excluding: <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>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 Deliverables from the Consignor which shall include loading and any other specific arrangements agreed in accordance with Clause 19.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 denoted by way of code in the Schedule to the Purchase Order to whom the Deliverables are to be Delivered or on whose behalf they are to be Collected at the corresponding address detailed in the Purchase Order 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 the Purchase Order from whom the Deliverables will be dispatched or Collected;

<b>Contract</b>	means the Purchase Order and the Conditions and any variations agreed by the Parties in accordance with Clause 2.a;
<b>Contractor</b>	means the person, firm or company specified as such in the Purchase Order;
<b>Contractor Commercially Sensitive Information</b>	means the information listed as such on the Purchase Order, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
<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>DAB Form 10</b>	means the MOD invoice summary form;
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in the Purchase Order;
<b>DEFFORM 30</b>	means an Electronic Transactions Agreement entered into between the Authority and the Contractor;
<b>DEFFORM 68</b>	means the MOD Hazardous Deliverables, Materials or Substances Statement;
<b>DEFFORM 96</b>	means the MOD Coding Sheet for Procurement Documentation form;
<b>DEFFORM 129J</b>	means the MOD Electronic Business Delivery form which must accompany the package or consignment to which it relates when payment is to be made using DECS P2P;
<b>DEF STAN 81-41</b>	means the Defence Standard for Packaging of Defence Materiel - Package Markings;
<b>Deliver</b>	means hand over the Deliverables to the Consignee which shall include unloading and any other specific arrangements agreed in accordance with Clause 19 and Delivered and Delivery shall be construed accordingly;
<b>Deliverables</b>	means the goods including Packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the Schedule to the Purchase Order;
<b>Delivery Date</b>	means the date on which the Deliverables or the relevant portion of them as specified in the Schedule to the Purchase Order are to be Delivered or made available for Collection;

<b>Denomination of Quantity (DofQ)</b>	means the quantity or measure by which an item of material is managed;
<b>Diversion Order</b>	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Deliverables to a Consignee other than the Consignee stated in the Schedule to the Purchase Order;
<b>Effective Date of Contract</b>	means the date stated on the Purchase Order or, if there is no such date stated, the date upon which both Parties have signed the Purchase Order;
<b>Firm Price</b>	means a price excluding Value Added Tax (VAT) which is not subject to variation;
<b>Hazardous Deliverable</b>	means a Deliverable or a component of a 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>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>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 on the Purchase Order;
<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>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 Deliverables for transportation and storage in accordance with the Contract;</p>
<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 materiel to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
<b>Purchase Order</b>	means the Authority's order for the Deliverables to which these Conditions are attached;
<b>Schedule of Requirements (SOR)</b>	means the Schedule of Requirements in the Purchase Order SC1 PO and Purchase Order Amendment (SC1 PO AMDT), which identifies, either directly or by reference, Deliverables, to be provided, the quantities and dates involved and the price or pricing terms in relation to each Deliverable;

<b>Specification</b>	means the description of the Deliverables, including any specifications, drawings, samples and / or patterns, referred to in the Schedule to the Purchase Order;
<b>STANAG 4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced from information at <a href="https://www.dstan.mod.uk/fags.html">https://www.dstan.mod.uk/fags.html</a> ; and
<b>Supported Business</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>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;.

## 2 General

- a. Except where the Authority varies the Consignee by issuing a Diversion Order pursuant to Clause 19.f, any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.
- b. If there is any inconsistency between these Conditions and the Purchase Order or the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
  - (1) the Conditions;
  - (2) the Purchase Order; and
  - (3) the documents expressly referred to in the Purchase Order.
- c. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
  - (1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
  - (2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.
- d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- e. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 2.d, the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act')). Any assignment of the right to receive payment of the Contract price (or any part thereof) under this Clause 2.e shall be subject to:
  - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 21.f
  - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

- (3) the Authority receiving notification under both Clauses 2.f and 2.g.2.
- f. 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 2.e, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- g. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under Clauses 2.e.1 and 2.e.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 2.e.1 and 2.e.2.
- h. The provisions of Clause 21 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.
- i. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.
- j. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- k. Subject to Clause 2.l, 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 2.l and Clause 13 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 Clause 2.k and for enforcement of any judgement, order or award given under English jurisdiction.
- l. If the Parties agree pursuant to the Purchase Order that Scots law should apply, then the following amendments shall be made to the Contract:
- (1) Clause 2.k 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 Clause 13 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 2.k and for enforcement of any judgement, order or award given under Scottish jurisdiction”;
  - (2) Clause 2.j shall not apply.
  - (3) Clause 13.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to Clause 13.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 13.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.”

### **3 Application of Conditions**

- a. The Purchase Order, these Conditions and the Specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied into by trade, custom, practice or course of dealings and no other terms and conditions endorsed upon, delivered with or contained in the Contractor's quotation, tender, specification or similar document form part of the Contract and the Contractor waives any right which it otherwise might have to rely on such terms and conditions.
- b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

### **4 Disclosure of Information**

- a. Both Parties shall keep in confidence all information received from the other Party under or in connection with the Contract. Neither Party shall disclose any such information to a third Party without the prior written consent of the other Party (which shall not be unreasonably withheld), except where:
- b. the information is already in the public domain;
- c. the information is already in the possession of the other Party without restriction as to its disclosure;
- d. the information is received from a third Party who lawfully acquired it without restriction as to its disclosure;
- e. the Contractor discloses the information to its employees, agents or sub-contractors to the extent necessary for the performance the Contract, provided that disclosure is subject to similar obligations of confidentiality; or
- f. either Party can show that any disclosure of information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation, including the Authority's obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

### **5 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.

### **6 Transparency**

- a. Subject to Clause 6.b, but notwithstanding Clause 4, 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 6.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, including the Contractor Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 6.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 Clause 6 shall affect the Contractor's rights at law.

## **7 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 7.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) 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 Clause 7 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 Clause 7 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Clause 7 in their subcontracts that they enter into to satisfy the requirements of the Contract.

## **8 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 take reasonable efforts to reflect this Clause in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Clause in their subcontracts that they enter into to satisfy the requirements of the Contract.

## **9 Sub Contracting to Supported Businesses**

a. When placing sub-contracts, the Contractor is asked to give consideration, as far as possible, to the placing of 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://base-uk.org/procurement>.

## **10 Change Of Control Of Contractor**

a. The Contractor shall inform the Mergers and Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol, BS34 8JH, as soon as practicable of any intended, planned or actual 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 10.a above, or has failed to supply or withheld the information required under clause 10.a above.



d. If the Authority exercises its right in accordance with Clause 20.a.4 to terminate 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 10.c must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

## **11 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 Administrator (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) 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) 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, a partnership 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 11.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 11.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 11.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 11.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 sub-contractor (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 or any other contract with the Crown; or

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

(2) 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 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 terms and 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 11.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 11.f. of this Condition, 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.

## **12 Consequences of Termination**

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.

## **13 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 13.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 13.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.

## **14 Supply of Deliverables and Quality Assurance**

- a. This Contract comes into effect on the Effective Date of Contract.
- b. The Contractor shall supply the Deliverables to the Authority at the Firm Price stated in the Schedule to the Purchase Order.
- c. The Contractor shall ensure that the Deliverables:
  - (1) correspond with the Specification;
  - (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement;
  - (3) comply with any applicable Quality Assurance Requirements specified in the Purchase Order; and

(4) comply with all applicable statutory and regulatory requirements (including environmental requirements) relating to the manufacture, labelling, packaging, storage, handling and Delivery / Collection of the Deliverables.

d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

## **15 Marking of Deliverables**

a. The Contractor shall ensure that each Deliverable is marked clearly and indelibly:

(1) in accordance with the requirements specified in the Purchase Order, or if no such requirement is specified, with the MOD stock reference number or alternative reference number specified in the Schedule to the Purchase Order;

(2) where the Deliverable has a limited shelf life, with the cure date / date of manufacture or expiry date expressed as specified in the Purchase Order, or in the absence of such requirement, 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 Deliverables;

b. Where it is not possible to mark a Deliverable with the required particulars, these should be included on the package in which the Deliverable is packed.

## **16 Packaging and Labelling of Deliverables (Excluding Deliverables Containing Ammunition or Explosives)**

a. The Contractor shall pack or have packed the Deliverables:

(1) in accordance with any requirements specified in the Purchase Order (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 Deliverable may be transported in an undamaged and serviceable condition.

b. The Contractor shall ensure that each package containing the Deliverables is labelled to include:

(1) the name and address of the Consignor and Consignee;

(a) The delivery destination / address if not 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 Deliverables enclosed;

(4) the full 13 digit NATO Stock Number (NSN) where the UK is registered as a user of it, or, where the Consignee is the Defence Infrastructure Organisation (DIO), with the alternative reference number specified in the Schedule to the Purchase Order;

(5) the makers part, catalogue, serial or batch number as appropriate;

(6) the Contract number;

- (7) any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3kg;
  - (8) where applicable, any particulars which cannot be marked on each Deliverable in accordance with Clause 15.b; and
  - (9) any additional markings specified in the Purchase Order;
  - (10) the Primary Packaged Quantity (PPQ).
- c. Bar code markings shall be applied to the external surface of each package and to each Primary Packaged Quantity (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. The Contractor shall obtain any wood, other than processed wood, used in packaging from:
- (1) companies which 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)).

## **17 Supply of Hazardous Deliverables**

- a. The Contractor shall establish if the Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 17. 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 the Schedule to the Purchase Order:
- (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 the Purchase Order (or if no such period is specified no later than one month prior to the Delivery Date), the Contractor shall provide to the Authority's Representatives in the manner and format prescribed on the Purchase Order:
- (1) a completed DEFFORM 68, confirming whether or not to the best of its knowledge any of the Deliverables are Hazardous Deliverables; and

- (2) for each Hazardous Deliverable, a Safety Data Sheet containing the data set out at Clause 17.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 17.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 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 Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority in accordance with Clause 17.d for 4 years after the end of the Contract and shall make them available to the Authority's Representatives on request.
- f. Nothing in this Clause 17 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

## **18 Intellectual Property**

- a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Deliverables.
- b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim.

## **19 Delivery / Collection**

- a. The Purchase Order shall specify whether the Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the 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 (Transport) in advance of the Delivery Date in order to agree specific arrangements for Delivery and provide any information pertinent to Delivery requested;
  - (2) comply with any special instructions for arranging Delivery set out on the Purchase Order;
  - (3) ensure that each consignment of the Deliverables is accompanied by, (as specified in the Purchase Order), 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 Deliverables to the Consignee at the address stated on the schedule to Purchase Order by the Delivery Date between the hours agreed by the Parties;
- c. Where the 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) 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 on the Purchase Order;
  - (3) ensure that each consignment of the Deliverables is accompanied by, (as specified in the Purchase Order), 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; and
  - (4) ensure that the Deliverables are and remain available for Collection by the Authority from the Consignor by the Delivery Date between the hours agreed by the Parties.
- d. Title and risk in the Deliverables shall only pass from the Contractor to the Authority:
- (1) on the Delivery of the Deliverables by the Contractor to the Consignee in accordance with Clause 19.b;
  - (2) or on the Collection of the Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with Clause 19.c.
- e. The Authority shall be deemed to have accepted the Deliverables thirty (30) days after title and risk has passed to the Authority in accordance with Clause 19.d, unless it has rejected the Deliverables within the same period.
- f. Where necessary the Authority may issue (or having issued cancel) a Diversion Order for urgent Delivery of the Deliverables identified in it:
- (1) where a Diversion Order is issued the Deliverables are to be Delivered by the quickest means available, unless otherwise directed.
  - (2) A Diversion Order which is beyond the scope of the Contract is to be returned immediately to the person who issued the Purchase Order 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 Officer) together with appropriate receipts and shall be priced and agreed in writing as a variation to the Contract in accordance with Clause 2.a. The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and packaging costs.



## 20 Authority's Remedies for Breach of Contract

a. If the Contractor:

- (1) fails to Deliver the Deliverables (or any part thereof) by the Delivery Date in accordance with Clause 19.b;
- (2) fails to ensure that the Deliverables (or any part thereof) are available for Collection by the Delivery Date in accordance with Clause 19.c;
- (3) subject to Clause 20.b, fails to supply Deliverables that comply with the undertaking at Clause 14.c;
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with Clause 10, or fails to supply or withholds the information, required under Clauses 10.a or 17.c and / or 17.d; or
- (5) 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:

- (6) where the failure or breach is material, to terminate the Contract or relevant part thereof with immediate effect by giving written notice to the Contractor;
- (7) reject those Deliverables that it has not accepted in accordance with Clause 19.e and return them to the Contractor (at the Contractor's risk and cost) and the Contractor shall refund to the Authority any sums paid in respect of the rejected Deliverables;
- (8) give the Contractor the opportunity at the Contractor's expense to remedy any defect in the Deliverables, to supply replacement Deliverables or otherwise to rectify the failure or breach within the Authority-specified time limits;
- (9) 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 reasonably incurred by the Authority in:
  - (a) carrying out any work that may be required to make the Deliverables comply with the Contract; or
  - (b) obtaining the Deliverables in substitution from another supplier.

b. The Contractor shall not be liable for the Deliverables' failure to comply with the undertaking at Clause 14.c 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 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 Deliverables in accordance with Clause 19.c.

c. This Clause 20 shall apply to any repaired or replacement Deliverables supplied by the Contractor in accordance with Clause 20.a.8.

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

## 21 Payment

- a. The Purchase Order specifies whether payment is to be enabled by DECS P2P, by MOD Form 640, or by AG173. Payment may only be made using DECS 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 the Purchase Order.
- b. Payment will be made by electronic transfer and prior to submitting any claims for payment under Clause 21.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 DECS P2P, submit a properly completed DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes; or
  - (2) submit the appropriate coloured copy of MOD Form 640 to the Consignee or as otherwise directed on the Purchase Order (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 on the Purchase Order.
- 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 DECS P2P to indicate receipt of the applicable Deliverables, or completing and signing the appropriate parts of the MOD Form 640 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 DECS 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 21.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 21.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 21.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 21.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with Clause 21.e.

h. Where the Authority is responsible for Collecting the Deliverables the Authority shall be deemed not to have received the DEFFORM 129J, MOD Form 640 or AG173 for the purposes of Clause 21.c until the earlier of:

- (1) the Deliverables being received to the Consignee; or
- (2) five (5) days after the Deliverables are available for Collection by the Authority as confirmed by the Contractor to the Authority's Representative (Transport) in accordance with Clause 19.c.4.

i. The approval of payment by the Authority under Clause 21.c 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 Clause 20 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.

k. The Contractor shall include in all sub-contracts entered into for the purpose of performing the Contract a term requiring payment to be made within a specified period not exceeding thirty (30) days from receipt of a valid invoice.

## **22 Progress Monitoring, Meetings and Reports**

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.

b. The Contractor shall attend progress meetings at the frequency or times (if any) specified in the Purchase Order and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings.

c. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in the Purchase Order. The reports shall detail as a minimum:

- (1) performance / Delivery of the Deliverables;
- (2) risks and opportunities;
- (3) any other Information specified in the Purchase Order; and
- (4) any other Information reasonably requested by the Authority.

## **23 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 the Purchase Order;
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Purchase Order, by electronic mail.

- b. Notices shall be deemed to have been received:
- (1) if delivered by hand, on the day of delivery if it is 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.