DHSC Terms and Conditions for the Supply of Goods

The Authority	**Secretary of State for Health and Social Care, on behalf of the Crown**
The Supplier	**Don and Low Limited** **Newfordpark House** **Glamis Road** **Forfar** **Angus** **DD8 1FR** **Company number SC005657**
Date	**5 June 2020**
Type of Goods	**Type IIR Face Masks**

This Contract is made on the date set out above subject to the terms set out in the Order Form and schedules ("**Schedules**") below. The Authority and the Supplier undertake to comply with the provisions of the Order Form and the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Goods on the terms of this Contract. For the avoidance of doubt, the Contract consists of the terms set out in the Order Form and the Schedules, together with the annexes as stated.

The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Error! Reference source not found.	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Additional Special Conditions

Order Form

1. **Contract Reference**	Don and Low Ltd Type IIR Face Masks
2. **Date**	5 June 2020
3. **Authority**	**Secretary of State for Health and Social Care, on behalf of the Crown** whose principal address is at: 39 Victoria Street Westminster London SW1H 0EU
4. **Supplier**	**Don and Low Limited** Newfordpark House Glamis Road Forfar Angus DD8 1FR Company number SC005657
5. **The Contract**	The Supplier shall supply the deliverable described below on the terms set out in this Order Form and the Schedules. Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3. In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail. Please do not attach any supplier terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.
6. **Deliverables**	(Goods) [redacted] Type IIR Face Masks Delivered in accordance with the following instructions:

	[redacted] from the commencement of delivery until the completion of the contracted volume. Delivery to be arranged by DHSC Freight Team, details to be confirmed following contract signature. Delivery Address(es) shall be the place of collection: Don & Low Limited Nonwovens Division Glamis Road Forfar Angus DD8 1EY Date(s) of Delivery: The first delivery shall be made in September, 2020, and the subsequent delivery schedule shall be agreed, and spread evenly across the period of the contract unless otherwise agreed. Packaging Instructions: TBC following instructions from the DHSC Freight Team but as a minimum labelled with the following: - Purchase Order Number - Product description - NPC code (to be provided by DHSC) - Pack Quantity - Contract Reference Delivery ex works: Yes Where delivery is ex works the delivery of the Goods shall be effected by the Supplier making those Goods available to the Authority Collection Agent for collection at the delivery address noted above and the remainder of the terms and conditions shall be construed accordingly.
7. Specification	The specification of the Deliverables is as set out below: - Type IIR Face Masks. - Tested and certified to EN14683 and CE marked - Compliant with the specifications as set out in https://www.gov.uk/government/publications/technical-specifications-for-personal-protective-equipment-ppe
8. Term	The Term shall commence on the date of this Contract.

	And the Expiry Date shall be 30 September 2021, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract. At least three months prior to the Expiry Date, the Authority may notify the Supplier if it wishes to discuss extension of the Contract. If the Authority gives such a notice, the parties will promptly, acting reasonably and in good faith, negotiate terms for the duration, volume and pricing of any extension, provided that (a) such terms shall not alter the overall nature of the contract; (b) the value of the extension shall not exceed 50 per cent of the value of the original contract; and (c) neither party shall be under any obligation to agree to an extension. All other terms and conditions of the Contract shall apply throughout any such extended period.
9. Charges	The Charges for the Deliverables shall be set out below: - [redacted] Total contract value: £41,040,000 (the **"Contract Value"**)
10. Payment	All invoices must be sent quoting a valid purchase order number to: mb-paymentqueries@dhsc.gov.uk Within 10 Business Days of receipt of your countersigned copy of the Contract, we will send you a unique Purchase Order number (the **"PO Number"**). You must in receipt of a valid PO Number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section by email to: mb-paymentqueries@dhsc.gov.uk The Charges shall be payable as follows:

	[redacted] shall be payable within 30 days of [redacted]ing the date of this Contract (the **"First Payment"**). Subsequent payments shall be made in accordance with Clause 6.3.3 of Schedule 2 (General Terms and Conditions) and shall be adjusted by the following reduction: *The proportion of the Contract Value to which the invoice relates multiplied by the First Payment* such that the entirety of the First Payment is amortised over the initial Term (unless otherwise reimbursed as otherwise provided for in this Contract) (the **"Reduction Mechanism"**).	
11. Authority Authorised Representative(s)	For general liaison your contact will continue to be [redacted]	
12. Seller's Authorised Representative(s)	For general liaison your contact will continue to be [redacted]	
13. Address for notices	**Authority:** [redacted]	**Supplier:** [redacted]
14. Key personnel	**Authority:** [redacted]	**Supplier:** [redacted]
15. Procedures and Policies	The Authority may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclose and Barring Service check	

	The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a "**Relevant conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

Signed by the authorised representative of THE AUTHORITY

Name:	[redacted]......................	Signature:	[redacted]........................
Position:	Deputy Director	Date	5th June 2020

Signed by the authorised representative of THE SUPPLIER

Name:	...[redacted]...	Signature	......[redacted]
Position:	FINANCE DIRECTOR	Date	21.5.20

Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

1.1 The standard Key Provisions at Clauses 1 to 2 of this Schedule 1 shall apply to this Contract.

1.2 The optional Key Provisions at Clauses 3 to 17 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.

1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Order of precedence

2.1 Subject always to Clause 1.10 of Schedule 3 should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

2.1.1 Order Form

2.1.2 Schedule 1: Key Provisions;

2.1.3 Schedule 2: General Terms and Conditions;

2.1.4 Schedule 3: Definitions and Interpretations;

2.1.5 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

2.2 For the avoidance of doubt, the Order Form shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included In these Terms and Conditions. Should there be a conflict between these parts of the Order Form, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

3 Quality assurance standards ☒ (only applicable to the Contract if this box is checked and the standards are listed)

3.1 The following quality assurance standards shall apply, as appropriate, to the manufacture, supply, and/or installation of the Goods:

- Tested and certified to EN14683 and CE marked
- Compliant with the specifications as set out in https://www.gov.uk/government/publications/technical-specifications-for-personal-protective-equipment-ppe

4 Purchase Orders ☒ (only applicable to the Contract if this box is checked)

4.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order.

5 Time of the essence ☐ (only applicable to the Contract if this box is checked)

5.1 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause **Error! Reference source not found.** of **Error! Reference source not found.**.

6 Specific time periods for inspection ☐ (only applicable to the Contract if this box is checked and Clause 6.1 of this Schedule 1 is completed)

6.1 The Authority shall visually inspect the Goods within **[*insert time period during which any inspection must be carried out*]** of the date of delivery of the relevant Goods.

7 Specific time periods for rights and remedies under Clause Error! Reference source not found. **of** Error! Reference source not found. ☐ **(only applicable to the Contract if this box is checked and Clause 7.1 of this Schedule 1 is completed)**

7.1 The Authority's rights and remedies under Clause **Error! Reference source not found.** of **Error! Reference source not found.** shall cease **[*insert period – e.g. 12 months*]** from the date of delivery of the relevant Goods.

8 Termination for convenience ☐ (only applicable to the Contract if this box is checked and Clause 8.1 of this Schedule 1 is completed)

8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on [**one (1)/three (3) months'**] written notice

9 Right to terminate ☒ (only applicable to the Contract if this box is checked)

9.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the [third] Breach Notice.

10 Consigned Goods ☐ (only applicable to the Contract if this box is checked)

10.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods in accordance with Clause **Error! Reference source not found.** of **Error! Reference source not found.** in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.

10.2 For the avoidance of doubt, Clause **Error! Reference source not found.** of **Error! Reference source not found.** shall apply to the inspection, rejection, return and recall of the Consigned Goods.

10.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.

10.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:

10.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;

10.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;

10.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and

10.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.

10.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each [**week/month/quarter/other agreed period**] detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.

10.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).

10.7 Each [***week/month/quarter/other agreed period***] the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned

Goods specified in the Order Form for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:

10.7.1 the Contract Price of the Minimum Quantity in the relevant period; and

10.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.

10.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.

10.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.

10.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within [***insert period***] of their delivery to the Authority and/or which have a remaining shelf life of less than [***insert period***].

10.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause **Error! Reference source not found.** of **Error! Reference source not found.**.

10.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 10.8 and 10.9 of this Schedule 1 shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this Schedule 1, shall survive the expiry or earlier termination of this Contract for these purposes.

11 Electronic product information ☐ (only applicable to the Contract if this box is checked)

11.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.

11.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same.

11.3 If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information.

11.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Authority's contracts from time to time.

11.5 Before any publication of the Product Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information in any product catalogue as a result of the approval.

11.6 If requested in writing by the Authority, and to the extent not already agreed as part of writing, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System

12 <u>Supply of PPE Goods ☒ (only applicable to the Contract if this box is checked)</u>

Regulatory Requirements

12.1 The Supplier acknowledges and understands that when procuring PPE the Authority is required to ensure the PPE Goods are compliant with and meet applicable legal and regulatory requirements.

12.2 The Supplier shall supply the PPE Goods to Authority in accordance with the terms of this Contract and in accordance with the relevant requirements of applicable laws and regulations applicable to the supply of PPE, including, as applicable, the EU PPE Regulation 2016/425, the Personal Protective Equipment (Enforcement) Regulations 2018 and the Medical Device Regulations 2002 (together the "**PPE Laws**").

12.3 Save in relation to any PPE Goods for which the Supplier has approval in accordance with the cross-Government Decision Making Committee and without prejudice to the generality of clause 12.2, the Supplier shall ensure for PPE Goods supplied:

12.3.1 the appropriate conformity assessment procedure(s) applicable to the PPE Goods have been followed;

12.3.2 all declarations of conformity and approvals required by PPE Laws are in place prior to the delivery of any PPE Goods to the Authority;

12.3.3 where required by PPE Laws, there is a CE mark affixed to the PPE Goods in accordance with the PPE Laws; and

12.3.4 where, necessary current EC-type examinations certificates are in place for the PPE Goods.

12.4 If there are any PPE Goods supplied to the Authority hereunder that require a CE mark under more than one set of regulations, due to the nature of those PPE Goods, including and not limited to:

- PPE Laws;
- Control of Lead at Work Regulations 2002;
- Ionising Radiations Regulations 2017;
- Control of Asbestos Regulations 2012;
- Control of Substances Hazardous to Health Regulations 2002; and
- any other relevant regulations,

the Supplier shall ensure that the CE marking for any such PPE Goods is affixed in accordance with the relevant requirements and shall indicate that the PPE Goods also fulfils the provisions of that other regulation or regulations.

Goods bought to the market before 21 April 2019

12.5 The Supplier shall provide details, including any EC-type examination certificates and approval decisions issued under Directive 89/686/EEC and Directive 93/42/EEC (if applicable), and corresponding national implementing legislation, of any PPE Goods supplied under this Contract that have been placed on the market before 21 April 2019 and products already in the distribution chain by that date confirming that these can continue to be supplied as PPE to the Authority until 21 April 2023, unless their certificate or approval will expire before that date.

Other Specific Requirements

12.6 The Supplier shall offer to the Authority spares and consumables required for any of the PPE Goods supplied to the Authority. The Supplier agrees any charging rate for the spares and consumables shall be inclusive of all packaging and standard delivery.

13 Right of first refusal during the Term ☒ (only applicable to the Contract if this box is checked)

13.1 If at any time during the Term the Supplier manufactures Goods/Deliverables in excess of the quantities set out in the Purchase Order(s) it shall immediately notify the Authority of the number and type of Goods/Deliverables and when they will be available for delivery to the Authority (**"Offer Notice"**).

13.2 The Authority shall be entitled at any time within the following 20 Business Days to issue a Purchase Order for all or any amount of the Goods/Deliverables specified in the Offer Notice on the same terms including price as set out in this Contract (**"Offer Period"**).

13.3 If the Authority does not issue one or more Purchase Orders within the Offer Period, the Supplier shall be entitled to sell the excess Goods/Deliverables specified in the Offer Notice to third parties.

14 Right of first refusal on expiry of the initial Term ☒ (only applicable to the Contract if this box is checked)

14.1 If the Supplier receives a bona fide offer from any third party to enter into a contract or arrangement to take effect within 3 months following the Expiry Date for the supply for a term of up to 12 months of Type IIR masks or similar equipment using production facilities in the UK, it shall first notify the Authority of the proposed terms as to pricing, volume, specification and duration specified in the offer.

14.2 If within 20 Business Days of such notification the Authority gives notice to the Supplier that it wishes to contract on the terms specified, the parties will enter into an agreement incorporating such terms and otherwise on the terms and conditions of this Contract, provided that any equivalent provision to this clause 14 shall only give a right to require a supply for up to 12 months after the original Expiry Date.

14.3 If the Authority does not give such notice within 20 Business Days, the Supplier shall be free to contract with the third party on the terms specified in the offer.

14.4 Where the parties enter into an agreement pursuant to Clause 14.2, this shall not prevent or restrict the Supplier from contracting with third parties (including but not limited to the third party who submitted the offer referred to in Clause 14.1) for the provision of Type IIR masks or similar equipment using production facilities in the UK in addition to the supply to be provided to the Authority under that agreement.

15. Acceptance tests ☒ (only applicable to the Contract if this box is checked)

15.1 The Supplier shall by dates agreed in writing with the Authority, at the Authority's election, either:

15.1.1 submit to the Authority for approval such quantities of reproduction samples of the Goods as the Authority may reasonably require (**"Sample Goods"**), such Sample Goods to be manufactured in conformance with the Specification; or

15.1.2 provide to the Authority written evidence satisfactory to the Authority that testing has been undertaken by the Supplier or by persons nominated by it (and approved by the Authority) to confirm compliance of pre-production samples of the Goods with the applicable standards set out in the Order Form.

15.2 The Sample Goods will be subject to the Authority's acceptance tests and inspections to be decided by the Authority and undertaken by the Authority and/or its representatives or, where third party approval is required, by that third party.

15.3 The Authority shall notify the Supplier whether the Same Goods have met the acceptance tests and inspections as soon as reasonably practicable.

15.4 The Authority's acceptance of the Sample Goods constitutes confirmation by the Supplier that the Goods shall be manufactured in conformity with those samples.

15.5 Where either:

15.5.1 the Sample Goods do not meet the acceptance tests and inspections; or

15.5.2 the Supplier fails to provide written evidence satisfactory to the Authority in accordance with Clause 15.1.2 above,

this shall be deemed to be a material breach of this Contract which is not capable of remedy and the Authority may terminate this Contract under Clause 12.4(i) of Schedule 2 of this Contract.

16. Refund of first payment ☒ (only applicable to the Contract if this box is checked)

16.1 With regard to the proportion of the First Payment that has not been amortised pursuant to the Reduction Mechanism as set out in Section 9 of the Order Form, it shall be reimbursed to the Authority as follows:

16.1.1 in full on early termination of this Contract by the Authority pursuant to Clauses 12.4 or 12.5 of Schedule 2; and

16.1.2 as to X% (where X is the percentage which the value of the Rejected Goods, before the reduction made pursuant to the Reduction Mechanism, bears to the Contract Value) where the Authority cancels its purchase obligations in relation to Rejected Goods in accordance with Clause 4.5 of Schedule 2 in addition to payments repayable pursuant to that clause,

in each case, together with interest at the Bank of England base rate plus 2% per annum accruing on a daily basis from the date of payment up to the date of reimbursement.

17. Set-off ☒ (only applicable to the Contract if this box is checked)

17.1 Without prejudice to clause 6.8 of Schedule 2, the Authority reserves the right to set-off:

17.1.1 any monies due to the Supplier from the Authority under this Contract as against any monies due to the Authority from the Supplier under any other contract between the parties; and

17.1.2 any monies due to the Authority from the Supplier under this Contract as against any monies due to the Supplier from the Authority under any other contract between the parties.