

46. The Special Conditions that apply to this contract are:

46.1. Options

- 46.1.1. The Contractor hereby grants to the Authority the following irrevocable option to procure additional Ballistic Calculators and spares as detailed in Schedule 13 – Additional Buys in accordance with the Terms and Conditions set out in the Contract, it being agreed that the Authority has no obligation to procure any additional buys
- 46.1.2. Should the Authority decide to exercise any of these options then it will do so by servicing a Purchase order through CP&F stating the quantity, delivery date and price using the information within Schedule 13 – Additional Buys applicable at the time the Purchase Order is raised which may be in an earlier pricing year than the date for delivery.
- 46.1.3. Schedule 13 – Additional Buys provides the Authority firm prices and lead times for the following banded quantities:
- | | |
|-----------|--------|
| 46.1.3.1. | 1; |
| 46.1.3.2. | 2-5; |
| 46.1.3.3. | 6-10; |
| 46.1.3.4. | 11-15; |
| 46.1.3.5. | 16-20; |
| 46.1.3.6. | 21-24 |
- 46.1.4 For the avoidance of doubt:
- | | |
|----------|---|
| 46.1.4.1 | The Authority has no obligation to exercise the above options. |
| 46.1.4.2 | The Authority shall not be liable for any advance commitment that the Contractor may enter in to in the pursuance of the Options referred to. |

46.2. Safety

- 46.2.1. The contractor shall ensure that the Equipment is safe to operate and maintain and that the requirements stipulated in the Contract for the safety of the Equipment are met in full. In performing the Contract, the Contractor shall comply with his statutory duties and obligations relating to safety and shall be responsible for ensuring that none of the Contract requirements cause him to be in breach of any statutory duty or obligation relating to safety.
- 46.2.2. If after the contract is made, it appears that any specification or other Contract Condition agreed between the Authority and the Contractor may render the Contractor in breach of any statutory duty or obligation relating to safety, he shall immediately draw the fact to the Authority's attention.

46.2.3. The Authority may, without any prejudice to any of its rights under the Contract, require the Contractor to vary each such Condition at his own expense in a manner acceptable to the Authority and which will not render the Contractor in breach of any statutory duty or obligation relating to safety. Nothing in the Contract, or in any other document created or signed on behalf of the Authority in connection with it, shall constitute a written undertaking for the purposes of Section 6(8) of the Health and Safety at Work Act 1974 relieving the Contractor of any of his duties under section 6 of the Act.

46.2.4. The Authority shall be entitled to reject the Equipment if any of the safety requirements set out in the contract are not met in full. The Contractor shall provide access to records, including Sub-contractor records, for Contract purposes, to enable the MOD-appointed Independent Safety Auditor to carry out safety audits and other assessment activities to meet MOD safety requirements.

46.3. Testing

46.3.1. The Authority reserves the right to test all repaired Articles. All testing shall be in accordance with that by the relevant specification.

46.4. Supply of Articles and Parts for use in repair

46.4.1. All spares and replacement parts supplied by the Contractor shall be at least to the original equipment manufacturers current specification and are to be purchased from approved suppliers.

46.4.2. Articles must not be removed from the premises to which they have been allocated without the prior approval of the Supply Chain Manager, except where it is necessary for the performance of sub-contracted work.

46.5. Builds and Specification Standard

46.5.1. The Contractor shall carry out the work specified in the Schedule of Requirements SOR (Schedule 2) in accordance with the Terms and Conditions of the Contract.

46.5.2. All Articles repaired shall be returned to the Authority configured in accordance with the Complete Equipment Schedule (CES) as contained within the Equipment Breakdown Structure (EBS) at Schedule 18.

46.6. Beyond Economic Repair (BER)

46.6.1. The Contractor shall promptly submit to the Authority's Supply Chain Manager full details of any article considered Beyond Economic Repair. The Contractor shall then await further instructions from the Authority and if it is decided that the should be repaired, the Contractor shall be authorised by the Authority accordingly.

46.6.2. An article shall be BER if the costs of repair exceed 75% of its current purchase value.

46.6.3. Should any article be found to be BER, the Authority shall confirm if the Article is to be returned complete to the depot or authorise its destruction.

46.6.4. Disposal costs will be in accordance with Schedule 11 - Repair Process and Price Menu.

46.7. Turnaround times (TAT)

46.7.1. Repair reports (inspection) for items are to be delivered to the Supply Chain Manager within 14 days of the repair request form being received from the Authority.

46.7.2. Repair of the Articles and delivery must be completed within TAT by band times in Schedule 11 - Repair Process and Price Menu.

46.7.3. Any delay to the order by the contractor must be formally communicated to the Authority's representative in Box 2 of DEFFORM 111.

46.8. Repair and Delivery of Items

46.8.1. All work to be carried out under line 9 of Schedule 2 – Schedule of Requirements shall be authorised and conducted in accordance with this condition and Schedule 11 - Repair Process and Price Menu.

46.8.2. Systems for repair shall be issued to the Contractor as Issued Property in accordance with DEFCON 611.

46.8.3. The Contractor shall be responsible for the inspection and repair of the Ballistic Calculator articles arising from non-warranty accident, misuse or negligence on the part of the Authority. The Contractor and Authority will follow the repair procedures as laid out in Schedule 11 - Repair Process and Price Menu.

46.8.4. All articles returned to the contractor shall undergo an initial inspection. The repair report shall take no longer than 14 days. All activity shall be included in the repair report, including the level of repair (high, medium, or low) in accordance with Schedule 11 - Repair Process and Price Menu. The Repair Report shall be used for the basis of claiming, in accordance with the prices in Schedule 11 - Repair Process and Price Menu. The Contractor will seek written approval from the Supply Chain Manager to proceed with the repair.

46.8.5. The Contractor shall maintain records of the failure causes of returned items and in accordance with AQAP 2110 (NATO Quality Assurance Requirements for Design Development and Production) failure causes shall be evaluated for recurring defects. A Corrective Action Report will be provided to the MOD for recurring failures. If any defect proves to be common to the Ballistic Calculator design or manufacturing process, the Contractor shall modify all systems that have already been supplied to the Authority and all future systems to be supplied. Such modifications shall be at no cost to the Authority. Turn-around times for any modifications shall be agreed with the Authority.

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46.9. Warranty

46.9.1. General

46.9.1.1. The Parts and Labour Warranty shall guarantee each Article against failure under the terms stated below, for Twelve (12) months. The period of Warranty for each Article shall commence from the date on which the Article is issued from [REDACTED] to the User Unit or 12 (twelve) months after the Contractor's delivery of the Article to [REDACTED], whichever is sooner. This Warranty is given to the Authority or its authorised representative, hereinafter referred to as the Authority. The Warranty provides full parts and labour coverage for design, workmanship or material failure of any part of the Article supplied as original equipment.

46.9.1.2. The Contractor undertakes that the Articles supplied against the Contract including all components supplied thereon by the Contractor as original equipment will be free from defect in design, materials and workmanship under normal use and service. The Contractor's obligations under this Warranty being limited to repairing or replacing any component or assembly, which proves to be defective. The Warranty provides full parts and labour cover against any failure of any part of the Article supplied as original equipment.

46.9.2. Exclusions

46.9.3. This Warranty shall not apply in respect of damage caused by:

- 46.9.3.1. Any use or maintenance of the Article not in accordance with the instructions described in the Technical documentation and training provided by the Contractor;
- 46.9.3.2. Any use or maintenance of the Article performed by non-authorised personnel;
- 46.9.3.3. War and peacekeeping operations resulting in battle damage;
- 46.9.3.4. Misuse or neglect; and
- 46.9.3.5. Any alterations, modifications or attachments made to the Article without the Contractor's approval

46.9.4. The Contractor shall not be liable under this Warranty to carry out:

- 46.9.4.1. Normal maintenance services and adjustments; and
- 46.9.4.2. Repairs to remedy fair wear and tear to any component.

46.9.5. Applicable Countries

- 46.9.5.1. The Parts and Labour Warranty applies worldwide

46.9.6. Warranty Repairs

- 46.9.6.1. Articles for repair are to be submitted to the Contractor once the repair has been verified as an acceptable warranty claim. The dismantling and/or refitting of parts to return the Article to a serviceable condition shall be carried out by the Contractor at no charge to the Authority. This is to include any necessary cleaning, testing and certification required by the repair.
- 46.9.6.2. An Article or part present to a Contractor for Warranty work shall be accompanied by Schedule 11 Annex A (Repair Request Form) with a completed part A indicating that the repair is a warranty repair. The Repair Request Form shall be submitted to the Contractor within 90 (ninety) days of the warranty event.
- 46.9.6.3. The Contractor shall complete the warranty work within the turnaround times specified in Schedule 11 - Repair Process and Price Menu for the appropriate level of repair.

- 46.9.6.4. In the event that warranty is disputed or rejected by the Contractor, the matter shall be resolved between the Contractor and the Dismounted Close Combat (DCC) Team. The Contractor shall inform the Project Manager of such disputes in writing within 24 (Twenty-four) hours of the dispute being identified.
- 46.9.6.5. Any Warranty defect identified by the Authority in material or workmanship must be communicated to the Contractor within 90 (ninety) days after date of recorded failure. During operational deployment reasonable endeavors will be made by the Authority to communicate warranty information within 90 (ninety) days of the recorded failure.

46.9.7. Replaced Part Warranty

- 46.9.7.1. Should any component fail within the Warranty Period as a result of a manufacturing or material defect, the Contractor shall undertake, at no cost to the Authority, to repair or replace the component free of charge.
- 46.9.7.2. Any part replaced by the Contractor free of charge to the Authority under this Warranty, or any approved repairs, shall be guaranteed for 12 (Twelve) months from the date that the replacement part is fitted in the Article.

46.9.8. Maintenance

- 46.9.8.1. Where the Authority carried out routine maintenance or servicing, this will not invalidate the Warranty provided that the maintenance procedures comply with the Technical Manuals and relevant training provided by the Contractor.

46.9.9. Warranty Liability

- 46.9.9.1. Liability under this Warranty is limited, at the discretion of the Contractor, to the replacement or repair free of charge of such parts that are judged to be defective under the terms of this Warranty provided that:
 - 46.9.9.1.1. Such defects are repaired by the Contractor; and
 - 46.9.9.1.2. Articles have been stored in accordance with the Contractor's recommended maintenance procedures; and

- 46.9.9.1.3. All work is carried out in accordance with Technical Documentation & Training provided by the Contractor and generally accepted engineering practices;
- 46.9.9.1.4. Only parts approved by the Contractor have been used to repair and maintain the Article, except where common items have been fitted that are the same or equivalent technical specification as the original Contractor-supplied part and have been NATO codified as such;
- 46.9.9.1.5. Any identity numbers, marks, warning or operating labels have not been altered, displaced or removed unless with the Contractors consent.
- 46.9.9.2. The Contractor shall not be responsible for the quality of any work carried out in the Authority's workshop except that the Contractor remains responsible for the quality of spares and the completeness and accuracy of the Technical Documentation as supplied to the Authority.
- 46.9.9.3. For Warranty repairs carried out in the Authority's workshops replaced warranty parts become the property of the Contractor after a claim is accepted. Parts replaced by the Authority will be held for 90 (ninety) days for inspection by the Contractor, after which the Authority may dispose of these parts and the cost of such disposal will be charged to the Contractor.
- 46.9.10. General Provisions
 - 46.9.10.1. Any dispute hereunder shall be dealt with in accordance with condition 40 – Dispute Resolution.
 - 46.9.10.2. This Warranty shall be governed by and construed in accordance with the laws of England.
 - 46.9.10.3. This Warranty shall be entirely without prejudice to the Authority's rights and remedies under the Contract or otherwise including (without limitation) rights and remedies relating to terms and conditions implied by law.

47. Post Design Support

- 47.1 Post Design Support is task structured and the Contractor shall submit Firm Price Quotations for each task, using the PDS Tasking pro-forma at Annex A to Schedule 12 - Post Design Support utilising the agreed rates in Schedule 12 – Post Design Support.
- 47.2 The processes that apply to this Contract are:

47.2.1 Post Design Services (PDS) Process

- 47.2.1.1. The Authority reserves the right to request Post Design Services (PDS) in support of the Ballistic Calculator systems for a period of five years from date of contract.
- 47.2.1.2. The PDS tasking process is detailed in Schedule 12 and the form for this process is in Annex A to Schedule 12.

47.2.2. Repair Process

- 47.2.2.1. The Repair process is detailed in Schedule 11 - Repair Process and Price Menu and the form for this process is in Annex A to Schedule 11 - Repair Process and Price Menu.

48. Delivery Process for deliveries to LCS Managed Depots

- 48.1. The Contractor and or any of its subcontractors shall comply with the requirements set out in the Logistics Commodities Services Transformation Authority Managed Material Supplier Manual (Version 2 – LDOC/CMO/V2.0 dated 28 Jun 19 – known as the “LCST Supplier Manual) in respect of all goods which are:
 - 48.1.1. supplied by the Contractor or any of its subcontractors under this contract; and
 - 48.1.2. which are to be delivered to depots which are managed and/or operated by Leidos Europe Ltd or its subcontractors pursuant to the Logistics Commodities and Services (Transformation) contract (Contract No. [LCST/0001]) (“LCS(T) Managed Depots”).

49. Additional Notes:

- 49.1. For the purposes of Clause 22 – Marking of Contractor Deliverables
 - 49.1.1. Copy of Def-Stan 05-132 is attached at Schedule 21
- 49.2. For the purposes of Clause 23 – Packaging and Labelling (excluding Contractor Deliverables containing Munitions),
 - 49.2.1 copy of Def Stan 05-132 is attached at Schedule 21
 - 49.2.2 copy of Def Stan 81-041 is attached at Schedule 21
 - 49.2.3 copy of DEFFORM 129A is attached at Schedule 21
 - 49.2.4 copy of DEFFORM 129B is attached at Schedule 21
 - 49.2.5 copy of DEFFORM 129J is attached at Schedule 21
- 49.3. For the purposes of Clause 24 – Supply of Hazardous Materials or Substances in Contractor Deliverables, copy of Def-Stan 07-085 is attached at Schedule 21

- 49.4. For the purposes of Clause 33 – Import and Export Licences, the number of days to be specified in Paragraph P is ten (10) Business Days. A copy of DEFFORM 528 is attached at Schedule 20 to the terms and conditions of this contract.
- 49.5 For the purposes of Clause 48 - Delivery Process for deliveries to LCS Managed Depots, a copy of the Supplier Manual is attached at Schedule 21.

50. Force Majeure (Only applies to Line items 1 to 4 in the Schedule of Requirements)

- 50.1 The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:
- a. acts of nature;
 - b. war;
 - c. hostilities;
 - d. fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence.
- 50.2 The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.
- 50.3 Subject to Clause 4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.
- 50.4 The maximum extension of time granted under this clause shall be limited to **4 weeks** after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.

51. Liquidated Damages (applies to all Line Items in the Schedule of Requirements)

- 51.1 Liquidated Damages will be applied at a rate of 1% of the value of the deliverables as set out in the Schedule of Requirement for a delay to delivery of one month (20 business days) and thereafter at a rate of 1% per month (20 business days) of delay up to a maximum of 6 months. The contract will expressly state that 6 months or 120 business days of delayed delivery is deemed to be a material breach and the Authority will have the express right to terminate in accordance with DEFCON 514 (Material Breach).
- 51.2 Liquidated Damages are set at a rate to reflect the Authority's qualitative pre-estimate of the Authority's losses, which include:

- a. The Authority's additional management effort required to liaise with the contractor, Authority warehouse staff and the Armed Services customer in respect of the delay;
 - b. The loss of opportunity to utilise the deliverable and make use of alternative equipment/services and/or delay the activities;
 - c. Any wasted time or expenditure that is rendered fruitless by the delay and/or loss of opportunity caused by the delay, by;
 - The Authority's storage, warehousing and logistics operation; or
 - The Armed Services user of the equipment;
 - Continued and ongoing use and support of existing capabilities;
 - The inconvenience and disruption caused by the delay, including any reasonably foreseeable indirect and consequential inconvenience and disruption.
- 51.2 The Liquidated Damage amounts listed herein are considered to be a fair estimate of the losses that might be incurred by the Authority as a result of late delivery. The value of Liquidated Damages, if incurred, are not intended to be punitive but are intended solely to affect a loss of profit and are not, therefore, considered unreasonable or egregious. These Liquidated Damages shall not prejudice either party's rights to damages in Common Law.

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