



Ministry  
of Defence



Defence Equipment & Support

DFAP/0036

Germany Bulk Ground Fuels (GBGF)



Equipping and Supporting our Armed Forces

**OFFICIAL-SENSITIVE COMMERCIAL****Table of Contents**

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**OFFICIAL-SENSITIVE COMMERCIAL****GENERAL CONDITIONS****1. General**

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
  - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
  - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
  - (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
  - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

**2. Duration of Contract**

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

**3. Entire Agreement**

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

**4. Governing Law**

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- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:
  - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
    - "a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
    - b. Subject to condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
    - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
  - Clause 40.b shall be amended to read:
    - "In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration 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."
- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

**5. Precedence**

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
  - (1) Conditions 1 - 44 (and 45 - 47, if included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
  - (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
  - (3) the remaining Schedules; and

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- (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition 40 (Dispute Resolution).

**6. Amendments to Contract**

- a. Except as provided in condition 31 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

**7. Variations to Specification**

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.
- b. Any variations that cause a change to:
  - (1) fit, form, function or characteristics of the Contractor Deliverables;
  - (2) the cost;
  - (3) Delivery Dates;
  - (4) the period required for the production or completion; or
  - (5) other work caused by the alteration,
 shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

**8. Authority Representatives**

- a. Any reference to the Authority in respect of:
  - (1) the giving of consent;
  - (2) the delivering of any Notices; or
  - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.
- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition 6 (Amendments to Contract).

**9. Severability**

- a. 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

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- (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.

**10. Waiver**

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

**11. Assignment of Contract**

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

**12. Third Party Rights**

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

**13. Transparency**

- a. Subject to clause 13.b but notwithstanding condition 14 (Disclosure of Information), 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 13.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, and any Information which has been acknowledged by the Authority at Schedule 5 – Contractor's Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.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 condition 13 shall affect the Contractor's rights at law.

**14. Disclosure of Information**

- a. Subject to clauses 14.d, 14.e, 14.h and condition 13 each Party:
  - (1) shall treat in confidence all Information it receives from the other;
  - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
  - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
  - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
  - (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
  - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

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- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses 14.a and 14.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses 14.a and 14.b shall not apply to any Information to the extent that either Party:
  - (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
  - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
  - (3) can show:
    - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
    - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
    - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
    - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.
- f. The Authority may disclose the Information:
  - (1) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
  - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;
  - (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
  - (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.
- g. Before sharing any Information in accordance with clause 14.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

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The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

**16.Change of Control of Contractor**

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:  
Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Spruce 3b # 1301  
MOD Abbey Wood,  
Bristol, BS34 8JH  
The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.
- c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.
- d. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- e. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this condition.

**17.Environmental Requirements**

The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

**18.Contractor's Records**

- a. The Contractor and its sub-contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
  - (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
  - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.



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- c. With regard to the records made available to the Authority under clause 1 of this Condition, and subject to the provisions of SC2 conditions of contract clause 14, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
  - (1) the end of the Contract term;
  - (2) termination of the Contract; or
  - (3) the final payment
 whichever occurs latest.

**19. 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 Schedule 3 (Contract Data Sheet);
  - (4) marked with the number of the Contract; and
  - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), 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 the recipient's Business and otherwise on the first Business Day of the recipient immediately 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.

**20. Progress Monitoring, Meetings and Reports**

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
  - (1) performance/Delivery of the Contractor Deliverables;
  - (2) risks and opportunities;
  - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
  - (4) any other information reasonably requested by the Authority.

**SUPPLY OF CONTRACTOR DELIVERABLES****21. Supply of Contractor Deliverables and Quality Assurance**

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
  - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
  - (2) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:

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- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
- (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
- (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

**22. Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

**23. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)**

- a. Packaging responsibilities are as follows:
  - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
  - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
  - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.
  - (4) Where the Contractor or any of their subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:
  - (1) The Contractor shall provide Packaging which:
    - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
    - (b) is labelled to enable the contents to be identified without need to breach the package; and
    - (c) is compliant with statutory requirements and this Condition.
  - (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
    - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
    - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
    - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.

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- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
  - (1) The Health and Safety At Work Act 1974 (as amended);
  - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
  - (3) The REACH Regulations 2007 (as amended); and
  - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
  - (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
  - (2) The Air Navigation (Amendment) Order 2019.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:
  - (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.
    - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:  
DES SEOC SCP-SptEng-Pkg  
MOD Abbey Wood  
Bristol, BS34 8JH  
Tel. +44(0)30679-35353  
{ HYPERLINK "mailto:DESSEOCSCP-SptEng-PKg@mod.uk" }
    - (b) The MPAS Documentation is also available on the DStan website.
  - (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).
  - (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
  - (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
  - (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
  - (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
  - (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 23.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
  - (8) The documents supplied under clause 23.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
- g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
  - (1) If the Contractor or their subcontractor is the PDA they shall:
    - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 23.f.

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- (b) Where the Contractor or their subcontractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:
  - i. a list of all SPIS which have been prepared or revised against the Contract; and
  - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
- (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 23.g(1)(b).
- (2) Where the Contractor or their subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
- (3) Where the Contractor or their subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, he shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g(1)(b).
- (4) Where the Contractor or their subcontractor is not a PDA but is registered, he shall follow clauses 23.g(1)(a) and 23.g(1)(b).
- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.
- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
  - (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
    - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
    - (b) Each consignment package shall be marked with details as follows:
      - i. name and address of consignor;
      - ii. name and address of consignee (as stated in the Contract or order);
      - iii. destination where it differs from the consignee's address, normally either:
        - (i). delivery destination / address; or
        - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
      - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
        - (i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 23.l.
  - (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
    - (a) description of the Contractor Deliverable;
    - (b) the full thirteen digit NATO Stock Number (NSN);
    - (c) the PPQ;
    - (d) maker's part / catalogue, serial and / or batch number, as appropriate;
    - (e) the Contract and order number when applicable;
    - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
    - (g) shelf life of item where applicable;
    - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
    - (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and

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- (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
  - (1) the full 13-digit NSN;
  - (2) denomination of quantity (D of Q);
  - (3) actual quantity (quantity in package);
  - (4) manufacturer's serial number and / or batch number, if one has been allocated; and
  - (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet).
- l. The requirements for the consignment of aggregated packages are as follows:
  - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
  - (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
    - (a) class group number;
    - (b) name and address of consignor;
    - (c) name and address of consignee (as stated on the Contract or Order);
    - (d) destination if it differs from the consignee's address, normally either:
      - i. delivery destination / address; or
      - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
    - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
    - (f) the CP&F-generated shipping label; and
    - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with condition 7 (Variations to Specification).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with condition 18 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

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- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: { HYPERLINK "https://www.dstan.mod.uk/" } 1
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

**24. Supply of Hazardous Materials or Substances in Contractor Deliverables**

- a. The Contractor shall provide to the Authority:
  - (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and
  - (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:
  - (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and
  - (2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
- c. If the Contractor is required, under, or in connection with the contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
  - (1) activity;
  - (2) the substance and form (including any isotope);
- g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as

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practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

(1) Hard copies to be sent to:

Hazardous Stores Information System (HSIS)  
Department of Safety & Environment, Quality and Technology (DS & EQT)  
Spruce 2C, #1260,  
MOD Abbey Wood (South)  
Bristol BS34 8JH

(2) Emails to be sent to:

{ HYPERLINK "mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk" } Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

- i. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

**25. Timber and Wood-Derived Products**

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:
  - (1) shall comply with the Contract Specification; and
  - (2) must originate either:
    - (a) from a Legal and Sustainable source; or
    - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
  - (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
  - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
  - (3) safeguarding the basic labour rights and health and safety of forest workers.
- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition 18 (Contractor's Records).
- g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
  - (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
  - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority may disclose the Information:
  - (1) The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the



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Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

- (2) verify the forest source of the timber or wood; and
- (3) assess whether the source meets the relevant criteria of clause 25.b.

- i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition 6 (Amendments to Contract).
- j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Representative (Commercial).
- k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with condition 6 (Amendments to Contract).
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
  - (1) companies that 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)).

**26. Certificate of Conformity**

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. The Contractor shall consider the CofC to be a record in accordance with condition 18 (Contractor's Records).
- c. The Information provided on the CofC shall include:
  - (1) Contractor's name and address;
  - (2) Contractor unique CofC number;
  - (3) Contract number and where applicable Contract amendment number;
  - (4) details of any approved concessions;
  - (5) acquirer name and organisation;
  - (6) Delivery address;
  - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
  - (8) description of Contractor Deliverable, including part number, specification and configuration status;
  - (9) identification marks, batch and serial numbers in accordance with the Specification;
  - (10) quantities;
  - (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.
- d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause



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26.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with condition 18 (Contractor Records).

**27. Access to Contractor's Premises**

- 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. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 1 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

**28. Delivery / Collection**

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor 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 as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
  - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
  - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
  - (4) be responsible for all costs of Delivery; and
  - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor 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) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) 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 in Schedule 3 (Contract Data Sheet);
  - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
  - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
  - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
  - (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
  - (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

**29. Acceptance**

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
  - (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or

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- (2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

**30.Rejection and Counterfeit Materiel****Rejection:**

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost. Rejected fuel is to be replaced by a delivery of uncontaminated fuel within 24 hours at no additional expense to the Authority
- b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

**Counterfeit Materiel:**

- c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:
  - (1) notify the Contractor of its suspicion and reasons therefore;
  - (2) where reasonably possible, and if requested by the Contractor within 10 business days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
  - (3) give the Contractor a further 20 business days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
  - (4) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel

Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a-30.b (Rejection).
- d. In addition to its rights under 30.a and 30.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:
  - (1) Retain any Counterfeit Materiel; and/or
  - (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;

and such retention shall not constitute acceptance under condition 29 (Acceptance).
- e. Where the Authority intends to exercise its rights under clause 30.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by the Authority, for:
  - (1) The separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
  - (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.
- f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 30.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:
  - (1) To dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
  - (2) to pass it to a relevant investigatory or regulatory authority;

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- (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or
- (4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 30.f.(1) to 30.f.(3) shall not constitute acceptance under condition 29 (Acceptance).

- g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.f.(4) then the balance shall accrue to the Contractor.
- h. The Authority shall not use a retained Article or consignment other than as permitted in this condition 30.c – 30.k.
- i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this condition 30.c – 30.k except where it has been determined in accordance with condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c.(4). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

**31.Diversion Orders**

- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

**32.Self-to-Self Delivery**

- a. Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

**LICENCES AND INTELLECTUAL PROPERTY****33.Import and Export Licences**

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

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- (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
  - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
  - (b) the end use as: For the Purposes of HM Government; and
- (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.
- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
  - (1) the Contractor shall, or procure that the Contractor's subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
  - (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
- i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

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- k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
  - (1) a non-UK export licence, authorisation or exemption; or
  - (2) any other related transfer or export control,
 that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in condition 34 (Third Party Intellectual Property – Rights and Restrictions).
- l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- m. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- p. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within [ @SC2 - 33.P - Number of days from receipt of updated DEFFORM 528 @ ] days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within [ @SC2 - 33.P - Number of days to accept updated DEFFORM 528 @ ] days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- q. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with condition 6 or 7 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.
- r. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.l, termination under Clause 33.q will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.
- s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the

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Contract or in respect of which the Services are to be provided, and that material is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such material to the Contractor.

- t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such material is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- u. Where:
  - (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or
  - (2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.
- v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

**34. Third Party Intellectual Property – Rights and Restrictions**

- a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:
  - (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
  - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
  - (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.
- b. If the Information required under clause 34.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject

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to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This condition shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
  - (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
  - (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
  - (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
  - e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
  - f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
  - g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
    - (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
    - (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
  - h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
  - i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
  - j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
    - (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

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- (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.
- k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
  - (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
  - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
  - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
  - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
  - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
  - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
  - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
  - (1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
  - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
  - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
  - (4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
  - (5) following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
  - (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The



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Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

- p. Nothing in condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

**PRICING AND PAYMENT****35.Contract Price**

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to condition 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.
- c. SUPPLY AND DELIVERY TO MTFI LOCATIONS
  - (1) Orders placed under the Contract shall be priced on the basis of a Firm Supply and Delivery price (not subject to variation for the duration of the Contract) and the Oil Market Report (O.M.R) Price of Fuel, calculated using Oil Market Report – Monthly Survey.
  - (2) The Firm Supply and Delivery price shall be inclusive of all overhead, labour, profit etc costs and be calculated in € (Euro) per 100 Litres and multiplied by the volume of Fuel delivered in accordance with Table 1 Annex B.
  - (3) The fuel price for all deliveries will be determined monthly in arrears based on the “O.M.R”. The actual price paid for fuel will be the mean of the high and low prices for that particular area where the delivery took place. The sum of the Firm Supply and Delivery price for the volume of Fuel delivered and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.
- d. SUPPLY AND DELIVERY TO EXERCISE LOCATIONS
  - (1) Requirements for fuel to be delivered to exercise locations, both within Germany and outside Germany the Authority will pay a Firm price € (Euro) per 100 Litres for the supply and delivery in accordance with Table 2 Annex B.
  - (2) The sum of the Firm Supply and Delivery price for the volume of Fuel delivered and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.
  - (3) To support the operational needs of Military Exercises, in accordance with paragraph 38 of the StOR Annex A, the Contractor may be required to deliver to an ad hoc unit or location not listed in the contract. In this instance the Authority will pay a Firm price € (Euro) per 100 Litres for the supply and delivery based on the KM distance in accordance with Table 3 Annex B.
  - (4) The sum of the Firm Supply and Delivery price for the volume of Fuel delivered and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.
  - (5) Should the Authority require to add a permeant unit or location not listed in the contract. In this instance the Authority shall request the Contractor to submit a Pricing Letter in accordance with paragraph 37 of the StOR at Annex A and the new location will be added to the contract subject to acceptance by the Authority. The Authority will request a Firm price for delivery in € (Euro) per 100 Litres based on the kilometre distance. If accepted by the Authority a Pricing Letter Exercise Location (Annex C) agreeing the price will be issued by the Authority prior to the work being undertaken. A copy of this Pricing Letter should be attached to the invoice documentation on the monthly price proposal.
  - (6) The sum of the Firm Supply and Delivery price for the volume of Fuel delivered and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.

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- (7) The fuel price will be determined monthly in arrears based on the "O.M.R". The actual price paid will be the mean of the high and low prices for that particular area where the delivery took place. The sum of the Firm Supply and Delivery price for the volume of Fuel delivered and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.

e. **UNIT COLLECTIONS**

- (1) For requirements where the Authority collects fuel in military BFCVs from the Contractor's facilities or agreed depot the Authority will pay a Firm Collection charge € (Euro) per 100 Litres of fuel collected. The Collection charges are detailed at Table 4 (Annex B).
- (2) The sum of the Firm collection price for the volume of Fuel collected and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.
- (3) Should the Authority require to add a permeant unit not listed in the contract the Authority shall request the Contractor to submit a Pricing Letter and the new location will be added to the contract subject to acceptance by the Authority. The Authority will request with a Firm price for delivery in € (Euro) per 100 Litres. If accepted by the Authority a Pricing Letter Unit Collect Location (Annex D) agreeing the price will be issued by the Authority prior to the work being undertaken. A copy of this Pricing Letter should be attached to the invoice documentation on the monthly price proposal.
- (4) The sum of the Firm collection price for the volume of Fuel collected and the O.M.R Price for the volume of fuel, shall constitute the total price to be paid to the Contractor.

**36.Payment and Recovery of Sums Due**

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 36a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 36b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority 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 this Contract.
- f. 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 other Government Department.

**37.Value Added Tax**

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.

**38.Debt Factoring**

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), 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 condition 38 shall be subject to:
  - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.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 38.b and 38.c(2).

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- b. 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 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
  - (1) is made aware of the Authority's continuing rights under clauses 38.a(1) and 38.a(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 clauses 38.a(1) and 38.a(2).
- d. The provisions of condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

**39.Subcontracting and Prompt Payment**

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:
  - (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
  - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
  - (3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and
  - (4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

**TERMINATION****40.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 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.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.

**41.Termination for Insolvency or Corrupt Gifts****Insolvency:**

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:
 

Where the Contractor is an individual or a firm:

  - (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
  - (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
  - (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

**OFFICIAL-SENSITIVE COMMERCIAL**

- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay his 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 his debts if:
  - (a) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or
  - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (10) the court making an administration order in relation to the company; or
- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in clauses 41.a(9) to 41.a(14) inclusive above.

- b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

**Corrupt Gifts:**

- c. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):
- (1) offer, promise or give 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) enter 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.
- d. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any 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, the Authority shall be entitled:
  - (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
  - (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
  - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this condition, the Authority shall:

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- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
- (2) give all 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.
- f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

**42.Termination for Convenience**

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
  - (1) not start work on any element of the Contractor Deliverables not yet started;
  - (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
  - (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
  - (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.
- c. Where this condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 42.b):
  - (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
    - (a) in the possession of the Contractor at the date of termination; and
    - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
  - (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
    - (c) all such unused and undamaged materiel; and
    - (d) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
  - (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
  - (1) the Contractor taking all reasonable steps to mitigate such loss; and
  - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

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- f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:
  - (1) the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);
  - (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and
  - (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.
- g. Claims for payment under this condition shall be submitted in accordance with the Authority's direction.

**43. Material Breach**

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.
- b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
  - (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
  - (2) obtaining the Contractor Deliverable in substitution from another supplier.

**44. Consequences of Termination**

The 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.

**45. Estimated Quantities**

- a. The quantities referred to in the Statement of Requirements (StOR) at Annex A are estimates only. The Authority may order more or less than the estimated quantities. In any event, the Authority shall not be bound to order any of the items referred to in the StOR nor to accept or pay for any items other than those actually ordered.

**46. Indemnity and Insurance**

- a. The Contractor shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his staff or sub-contractors, or by any circumstances within his or their control.
- b. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- c. The Contractor shall hold employer's liability insurance in respect of his staff in accordance with any legal requirement for the time being in force.
- d. The Contractor shall produce to the Authority's representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- e. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition a above.

**OFFICIAL-SENSITIVE COMMERCIAL****47. Loss of or Damage to the Articles**

- a. Until delivery, the risk of loss of or damage to the Articles remains with the Contractor. Without prejudice to any other rights or remedies of the Authority, the Contractor shall make good any such loss or damage however caused or occasioned which occurs before delivery.
- b. Clause a shall apply notwithstanding:
  - i. that the Articles may have been inspected by the Authority; or
  - ii. that the property therein may have passed earlier than upon delivery.
- c. Unless otherwise agreed and save for the provisions of Clause d of this Condition, the Contractor shall not after delivery be at risk in respect of the Articles, except where the Authority rejects any Article under, in which case the risk in the rejected Article shall revert to the Contractor on the earlier of:
  - i. the removal of the Article by the Contractor in accordance with Clause c of Condition 30 Rejection; or
  - ii. the close of business on the last day of the period in which the Contractor is required to remove the rejected Article in accordance with Clause c of Condition 30 Rejection; or
  - iii. the return of the Article by the Authority in accordance with Condition 30 Rejection.
- d. Notwithstanding the provisions of Clause c of this Condition, if the Contractor has given notice of objection within 24 hours he shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the Authority.
- e. This Condition shall not apply to any Articles issued to the Contractor by or on behalf of the Authority in connection with which the Contractor is required to carry out any Service.

**48. Specific DEFCONs that apply to this contract**

- a. The following DEFCONs shall apply to this Contract DFAP/0036
  - i. DEFCON 5J (Edn 18/11/16) Unique Identifiers
  - ii. DEFCON 76 (SC2) (Edn 11/17) Contractor's Personnel At Government Establishments
  - iii. DEFCON 532A (Edn. 04/20) Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority).
  - iv. DEFCON 624 (SC2) (Edn 11/17) Use Of Asbestos
  - v. DEFCON 630 (SC2) (Edn. 11/17) Framework Agreements
  - vi. DEFCON 658 (SC2) (Edn. 11/17) Cyber – The Risk Profile is Very Low. The Risk Assessment reference (RAR) is (RAR-THRD7GDC).

**49. Specific Quality Assurance conditions that apply to this contract.**

- a. The following Quality
  - i. DEFSTAN 05-061 Quality Assurance Procedural Requirements - Contractor Working Parties
  - ii. DEFSTAN 05-135 Avoidance of Counterfeit Materiel
  - iii. AQAP 2131 Edition C Version 1 NATO Quality Requirements for Final Inspection.

**OFFICIAL-SENSITIVE COMMERCIAL****Schedule 1 - Definitions of Contract**

<b>Articles</b>	means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports.
<b>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 Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of condition 8;
<b>Business Day</b>	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a. Government Department;</li> <li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c. Non-Ministerial Department; or</li> </ul> Executive Agency;
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;
<b>Commercial Packaging</b>	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;



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<b>Consignor</b>	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract);
<b>Contract Price</b>	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
<b>Contractor</b>	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
<b>Contractor Deliverables</b>	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;
<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> <ul style="list-style-type: none"> <li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li> <li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li> </ul> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
<b>CPET</b>	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise

**OFFICIAL-SENSITIVE COMMERCIAL**

would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

<b>Dangerous Goods</b>	<p>means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:</p> <ul style="list-style-type: none"> <li>a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);</li> <li>b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);</li> <li>c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);</li> <li>d. International Maritime Dangerous Goods (IMDG) Code;</li> <li>e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;</li> <li>f. International Air Transport Association (IATA) Dangerous Goods Regulations.</li> </ul>
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at { HYPERLINK " <a href="https://www.aof.mod.uk">https://www.aof.mod.uk</a> " };
<b>DEF STAN</b>	means Defence Standards which can be accessed at { HYPERLINK " <a href="http://www.dstan.mod.uk">http://www.dstan.mod.uk</a> " };
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;
<b>Denomination of Quantity (D of Q)</b>	means the quantity or measure by which an item of material is managed;
<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Diversion Order</b>	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of

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	Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
<b>Effective Date of Contract</b>	means the date specified on the Authority's acceptance letter;
<b>Evidence</b>	means either: <ul style="list-style-type: none"> <li>a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or</li> <li>b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;</li> </ul>
<b>Firm Price</b>	means a price (excluding VAT and mineral oil duty in accordance with Condition 37 Value Added Tax) which is not subject to variation;
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Government Furnished Assets (GFA)</b>	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Hazardous Contractor Deliverable</b>	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
<b>Information</b>	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
<b>Issued Property</b>	means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Legal and Sustainable</b>	means production and process methods, also referred to as timber production standards, as defined by the document titled

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"UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;

**Legislation**

means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

**Military Level Packaging (MLP)**

means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;

**Military Packager Approval Scheme (MPAS)**

is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);

**Military Packaging Level (MPL)**

shall have the meaning described in Def Stan 81-041 (Part 1);

**MPAS Registered Organisation**

is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;

**MPAS Certificated Designer**

shall mean an experienced Packaging designer trained and certified to MPAS requirements;

**NATO**

means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;

**Notices**

shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

**Overseas**

shall mean non UK or foreign;

**Packaging**

Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;

Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;

**Packaging Design Authority (PDA)**

shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;

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<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Primary Packaging Quantity(PPQ)</b>	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
<b>Recycled Timber</b>	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> it excludes sawmill co-products;
<b>Safety Data Sheet</b>	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
<b>Schedule of Requirements</b>	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;
<b>Short-Rotation Coppice</b>	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
<b>Specification</b>	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);
<b>STANAG 4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced at { HYPERLINK "http://www.dstan.mod.uk/faqs.html" };
<b>Subcontractor</b>	means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;
<b>Timber and Wood-Derived Products</b>	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such

**OFFICIAL-SENSITIVE COMMERCIAL****Transparency  
Information**

products range from solid wood to those where the manufacturing processes obscure the wood element;

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;

**Virgin Timber**

means Timber and Wood-Derived Products that do not include Recycled Timber.

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**Schedule 2 – Schedule of Requirements**MTFI

Supply and deliver diesel (NATO F-54) complying with BS EN 590 (latest issue) to the MTFIs at the locations listed in the table below for the use of British Forces. (MTFI Delivery):

Serial	Locations	Estimated Annual Volume (litres)	Tank Capacity (litres)	Price (€) Ex VAT
1	MTFI at Athlone Barracks, Husarenstrasse, 33104 Sennelager	240,000	60,000	In Accordance with Annex B Firm Price Premium)
2	MTFI at Normandy Barracks, Bielefelderstrasse, 33104 Sennelager	240,000	75,000	
3	MTFI at Ayrshire Barracks, Aachenerstrasse 41061 Mönchengladbach	60,000	80,000	

Packaging requirements in compliance with DEFSTAN 91-066 (latest edition)

Exercise Delivery and Unit Collect

Supply and deliver diesel (NATO F-54) complying with BS EN 590 (latest issue) to Exercise Locations and Supply diesel (NATO F-54) complying with BS EN 590 (latest issue) for unit collect.

Serial	Locations	Estimated Annual Volume (litres)	Price (€) Ex VAT
4	Unit collect or exercise delivery	72,000	In Accordance with Annex B Firm Price Premium)

Packaging requirements in compliance with DEFSTAN 91-066 (latest edition)

**OFFICIAL-SENSITIVE COMMERCIAL****Schedule 3 – Contract Data Sheet**

<b>General Conditions</b>
<b>Condition 2 – Duration of Contract:</b>  The Contract start date 28 May 2021 and will expire 27 May 2025.
<b>Condition 4 – Governing Law:</b>  Contract to be governed and construed in accordance with:  English Law  Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows:  Not Applicable
<b>Condition 8 – Authority’s Representatives:</b>  The Authority’s Representatives for the Contract are as follows:  Commercial: as per DEFFORM 111  Project Manager: as per DEFFORM 111
<b>Condition 19 – Notices:</b>  Notices served under the Contract shall be sent to the following address:  Authority: MOD Abbey Wood, Cedar 3a, #3360, Bristol BS34 8JH  Contractor: TBC
<b>Condition 20.a – Progress Meetings:</b>  The Contractor shall be required to attend the following meetings:  In accordance with Annex A Statement of Requirement
<b>Condition 20.b – Progress Reports:</b>  The Contractor is required to submit the following Reports:  In accordance with Annex A Statement of Requirement  Reports shall be Delivered to the following address:  In accordance with Annex A Statement of Requirement



**OFFICIAL-SENSITIVE COMMERCIAL**

<b>Supply of Contractor Deliverables</b>
<b>Condition 21 – Quality Assurance:</b>  Is a Deliverable Quality Plan required for this Contract?  N/A  Other Quality Assurance Requirements:  DEFSTAN 05-061 Pt 4 Issue 3 Quality Assurance Procedural Requirements - Contractor Working Parties  DEFSTAN 05-135 Avoidance of Counterfeit Materiel  AQAP 2131 Edition C Version 1 NATO Quality Requirements for Final Inspection.
<b>Condition 22 – Marking of Contractor Deliverables:</b>  Special Marking requirements:  In accordance with Annex A Statement of Requirement
<b>Condition 24 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:</b>  A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:  a) The Authority's Representative (Commercial)  b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk  to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: Upon Signature of the DEFFORM 10
<b>Condition 25 – Timber and Wood-Derived Products:</b>  N/A
<b>Condition 26 – Certificate of Conformity:</b>  Is a Certificate of Conformity required for this Contract? No
<b>Condition 28.b – Delivery by the Contractor:</b>  In accordance with Annex A Statement of Requirement
<b>Condition 28.c - Collection by the Authority:</b>  In accordance with Annex A Statement of Requirement

**OFFICIAL-SENSITIVE COMMERCIAL****Condition 30 – Rejection:**

The time limit for rejection shall be in accordance with Annex A Statement of Requirement

**Condition 32 – Self-to-Self Delivery:**

Self-to-Self Delivery required? N/A

**Pricing and Payment****Condition 35 – Contract Price:**

In accordance with General Conditions 35, 36 and 37, Annex A Statement of Requirement and Annex B Firm Pricing (Premium)

**Termination****Condition 42 – Termination for Convenience:**

The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here

**Other Addresses and Other Information** *(forms and publications addresses and official use information)*

See Annex A to Schedule 3 (DEFFORM 111)

**OFFICIAL-SENSITIVE COMMERCIAL****ANNEX A - Statement of Requirement****The Supply of Bulk Diesel Fuel to British Forces in Germany****Overview**

1. British Forces in Germany need the capability to refuel their vehicles from Mechanical Transport Fuel Installations (MTFIs) in a limited number of locations. There is therefore a requirement for the supply of diesel to the fuel storage tanks at these MTFIs. There is also a requirement for the delivery of fuel to exercise areas and for the Authority's Bulk Fuel Carrying Vehicles (BFCVs) to be filled at the Contractor's depots.

**Requirement**

2. The Contractor will be required to:

- a. Supply and deliver diesel (NATO F-54) to the MTFIs at the locations listed in the table below for the use of British Forces. (MTFI Delivery)
- b. Supply and deliver diesel (NATO F-54) to temporary military fuel storage or military Bulk Fuel Carrying Vehicles (BFCVs) at exercise locations throughout Germany, some of which may be outside military training areas. (Exercise Delivery)
- c. Supply diesel (NATO F-54) to military Bulk Fuel Carrying Vehicles (BFCVs) at the Contractor's nominated collection point. (Unit Collect)

**Specification**

3. The Contractor is to ensure that all diesel fuel supplied complies with EN 590. Any variation from full compliance is to be approved by the Authority's technical representative in writing before supply. The technical representative can be contacted on:

e-mail: { HYPERLINK "mailto:DefLog-OpsCap-DSFAFuelsTech@mod.gov.uk" \t "\_blank" }  
 telephone: +44 (0)3067983592

**Annual Quantities**

4. The estimated annual quantities for delivery are as shown below. The Authority shall not be bound to order any quantities, to receive quantities other than those ordered, or to pay for quantities other than those accepted by the Demanding Officer.

Serial	Locations	Estimated Annual Volume (litres)	Tank Capacity (litres)
1	MTFI at Athlone Barracks, Husarenstrasse, 33104 Sennelager	240,000	60,000
2	MTFI at Normandy Barracks, Bielefelderstrasse, 33104 Sennelager	240,000	75,000
3	MTFI at Ayrshire Barracks, Aachenerstrasse 41061 Mönchengladbach	60,000	80,000
4	Unit collect or exercise delivery	72,000	
	<b>Total Annual Requirement</b>	<b>612,000</b>	

**OFFICIAL-SENSITIVE COMMERCIAL****Page Break** **Quality and Inspection**

5. The Contractor shall be responsible for compliance with all relevant European legislation, regulations, and licensing regarding the carriage of dangerous substances in road tankers.
6. The Contractor shall ensure that they comply with the provisions of Defence Standard 91-066 (latest issue) – The Segregation, Handling and Quality Assurance of Petroleum Fuels, Lubricants and Associated Products.
7. Whether the Contractor provides the refuelling service directly through their own Company, or via a sub-contractor, they shall undertake to maintain the Quality and Inspection in accordance with Defence Standard 91-066 (latest issue).
8. The Contractor shall be responsible for ensuring all products delivered under this contract conforms in all respects to the specification detailed in paragraph 3.
9. The Authority shall have the right to send a representative to ensure that the Contractor's facility is working to the satisfaction of the Authority. Check samples may be drawn by the Authority's representative during such visits and the Contractor shall afford the necessary facilities to enable this to be done.
10. If the Contractor or the Contractor's sub-contractor provides fuel, the Contractor shall accept responsibility for the standard of service and quality of all products supplied and, shall indemnify the Authority against all liability for loss or damage arising from the supply of any product which does not fully meet the contract specification.

**Order Management**

11. At Appendix 1 to this StoR is a list of all staff authorised to place orders including their contact details. These staff will be referred to as Authorised Demanders. The Authority may nominate additional Authorised Demanders: if it does so, it will provide the contact information to the Contractor a minimum of 10 working days before that Authorised Demander places an order.

12. The order will contain the following information:

- Name of authorised demander
- Unique Order Number
- Quantity of product required
- Method of supply (MTFI, Exercise Delivery or Unit Collection)
- Date and time of delivery (if applicable, otherwise desired date and time of collection)
- Location of delivery (if applicable, otherwise desired collection point)
- UIN of receiving unit

**Deliveries**

13. The Contractor will be required to acknowledge receipt of the order within 2 working days of the written order being received.
14. The Contractor will deliver fuel within 5 working days of acknowledging the request from the Authority or on the delivery date specified if later.
15. The Authority will have the right to cancel orders without charge up to one complete working day before the planned delivery. German public holidays will not be counted as working days.
16. It is essential that the Contractor's road tanker(s) report to their nominated Authority locations at the time specified by the Authorised Demander.

**OFFICIAL-SENSITIVE COMMERCIAL**

17. To assist the Authority, the Contractor shall provide point of contact details for normal working hours (08:00 to 17:00, Monday to Friday) and for out of office hours and weekends.

18. The Contractor shall advise the Authority immediately in the event of any breakdown, accident or departure from the agreed schedule.

**Security**

19. The name of the driver must be supplied to the Authority (the Authorised Demander that raised the Order) at least 24 hours before the delivery is made, to conform to the Authority's security requirements. If a sub-contractor is used, the name of the company carrying out the delivery is also required.

20. The Contractor's drivers must be escorted at all times while on the Authority's premises or on any exercise area used by the Authority. The Authority will be responsible for arranging a suitable escort, and for notifying the Contractor of the location from which the Contractor's driver is to be escorted.

**Receipt Quality Checks**

21. The Authority shall have the right to verify the quantity of fuel recorded as having been delivered and to check the accuracy of the quantities delivered. If the Authority does not agree the measurement of the quantities delivered, a further check on the quantities delivered shall be made by a measuring device provided by the Authority. If the Authority is still not satisfied after such further check, the delivery ticket shall be annotated with such details of any discrepancy. The complaint will be confirmed in writing to the Contractor's local representative.

22. The Authority shall have the right to conduct pre-receipt checks to confirm quality of the delivery. If the density of the fuel determined pre-receipt is not  $\pm 3 \text{ Kg/m}^3$  within the results reported on the Contractor's documentation, then this will be cause for rejection of the load. All density measurements will be corrected to 15C to allow for changes in density due to temperature changes. Rejected fuel is to be replaced by a delivery of uncontaminated fuel within 24 hours at no additional expense to the Authority

23. Each delivery shall be accompanied by a delivery ticket. The delivery ticket must be signed by both the Contractor's and the Authority's representatives. One copy shall be retained by the Contractor for their records. Electronic delivery tickets will be acceptable

24. The Authority is responsible for ensuring that the storage into which the fuel is to be delivered shall safely receive the full quantity ordered, and the connecting hose is properly and securely connected to the fuelling point of the said storage. The Authority accepts responsibility for dealing with any loss, leakage or contamination that may occur from the point at which the Contractor's hose connects to the Authority's coupling.

25. The Authority is required to have adequate emergency procedures and to provide immediate assistance to the Contractor or their representative in the event of a spill of product upon delivery. If an escape, spillage or discharge of fuel (hereinafter referred to as a 'spill') occurs during a delivery to the Authority, the Authority will promptly take such action as is deemed necessary to remove the spill and mitigate its effects. Any expenses, damages, costs or other such loss or damage arising from the spill, or pollution of fuel, shall be paid by the party that caused the spill, or other such loss or damage, by negligent act or omission. If both parties have acted negligently, any expenses or other such loss or damage, shall be divided between the parties in accordance with the respective degree of negligence. Should parties not be able to agree how any expenses or other such loss or damage should be divided, Condition 40 – Dispute Resolution (English Law) will apply.

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26. The Contractor shall ensure that the delivery hoses and couplings match the receipt line capacity and couplings link points respectively.

27. The supplied product must be handled in accordance with the handling procedures as detailed in the Defence Standard 91-066 (latest issue); or other management plan approved by the Authority.

**Invoicing and Tax Exemption**

28. British Forces when in Germany are exempt from both mineral oil duty and Value Added Tax under the terms of the Supplementary Arrangement to the Status of Forces Agreement. The Contractor will ensure that all deliveries and collections are invoiced free of these taxes. The Contractor is to provide Abwicklungsscheine with the invoice for this purpose.

29. The Contractor will arrange for payments to be made through EXOSTAR as the Authority's mandated payment mechanism. Further details and costs are stated at { HYPERLINK "https://my.exostar.com/pages/viewpage.action?pageId=12124945" \t "\_blank" } or by contacting { HYPERLINK "mailto:DBSCS-ECFinanceTeam@mod.uk" \t "\_blank" }

**Management Information**

30. Copies of the previous calendar month's delivery data must be sent to the Authority by the 14<sup>th</sup> calendar day of the month. The Information shall be submitted to:

[REDACTED -PERSONAL] and  
[REDACTED -PERSONAL]

The delivery data shall include as a minimum the receiving unit's UIN, the date the demand was received, the date the fuel was delivered, the quantity ordered and the quantity delivered, the price and the invoice value. The Authority reserves the right to develop and amend the content of reports and reporting process.

31. The Supplier will be required to participate in Transition meetings with the Authority between contract award and the start of the contract. The Supplier will also be required to participate in contract progress meetings with the Authority. Contract progress meetings will routinely take place every six months, though the Authority may require additional meetings to address specific issues or problems.

**Quality Management**

32. The Contractor must ensure that Quality is managed and that procedures will be sufficiently robust to ensure that the services supplied to the Authority will be of continual high quality throughout the duration of the Agreement.

33. Although not requiring a certified Quality management system to ISO 9001, the Contractor must apply the Quality management principles of ISO 9000; customer focus, leadership, engagement of people, process approach, improvement, evidence-based decision making and relationship management), in addition complying to:

- Defence Standard 91-066 (latest issue) – The Segregation, Handling and Quality Assurance of Petroleum Fuels, Lubricants and Associated Products.
- DEFCON 608 – Access and Facilities to be provided by the Contractor

**MTFI Delivery – Specific Requirements.**

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34. **Delivery Times.** Delivery of fuel must be made on the date requested by the Authority. The Contractor must ensure they allow sufficient time to discharge the delivery within the operating hours of the MTFI location, unless previously agreed by the Authority.

35. Deliveries during a working week will be required during the period 0730 - 1600 hrs Monday to Thursday and 0730 to 1100 hrs on a Friday. The Contractor shall inform the Authority immediately of any problems concerning any deliveries.

36. **Couplings.** All MTFIs are equipped with Industry Standard couplings to DIN 28450 for receipt. The Contractor must assure themselves that they can safely conduct deliveries using the Authority's receipt coupling. The Authority will provide the Contractor with access to the site for a preparatory visit. No Scully system is in place: the Contractor's vehicles must be able to operate within these parameters.

**Exercise Delivery - Specific Requirements**

37. It is expected that exercise deliveries will normally be required at the following locations.

Sennelager  
Mönchengladbach  
Bergen-Hohne  
Mainz Kastel  
Grafenwöhr  
Hohenfels  
Burg bei Magdeburg

38. However, to support the operational needs of Military Exercises, the Contractor may be required to deliver to a unit or location not listed in the contract. In this instance the Authority shall request the Contractor to submit a pricing letter and the new location will be added to the contract subject to acceptance by the Authority. A minimum of five (5) working days' notice will be given to the Contractor to provide a delivery premium for the new location(s).

39. Delivery of fuel by the Contractor to exercise areas must be arranged using the most economical means and route. Details of exercise requirements will be notified by the Authority. Furthermore:

a. The Contractor will be required to make deliveries to exercise locations throughout Germany. Delivery will be either to a bulk fuel installation or directly into a military BFCV. Precise exercise location details and dates will be notified as far in advance as possible with details of quantities to be delivered being notified as soon as possible thereafter.

b. If the transfer is made into a vehicle, the Authority will ensure that the transfer takes place in a suitable location, agreed by both the Authority and the Contractor, over a non-permeable surface, located within an area protected by an oil water interceptor of sufficient size and designed to prevent any spilled product polluting the environment. Prior to the delivery taking place the Contractor must ensure that their drivers and operators are aware of the process to be conducted and satisfy themselves that the process is safe. An outline of the process to be followed is provided in Appendix 2. In addition, the Authority will provide suitably qualified personnel to ensure that safe transfer of fuel can be made into the Authority's Vehicle.

40. **Couplings.** UK military BFCVs are equipped with 3" dry break coupling and 2.5" 5 pin Scully socket. The Contractor is to ensure that all delivery vehicles satisfying the requirements of the Authority are compatible. The use of appropriate adaptors is acceptable if required to enable fuel to be transferred.

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41. The Contractor must ensure delivery of fuel to be within 1 hour of time requested, unless expressly approved by the Authority.

**Unit Collection – Specific Requirements**

42. There is a requirement for the Authority to collect fuel in military BFCVs from the Contractor's facilities or agreed depot. The Authority requires the Contractor to offer this facility at sites that are within 150km by road of the following potential exercise areas, so that the total round trip journey will be no more than 300 km.

Sennelager  
Mönchengladbach  
Bergen-Höhne  
Mainz Kastel  
Grafenwöhr  
Hohenfels  
Burg bei Magdeburg

43. The Contractor is to make available to the Authority a list of all sites at which collection will be possible, and coupling requirements needed to operate at these sites.

a. In advance of any such collection, the Contractor is to facilitate a visit by the Authority's representative to enable the Authority to conduct a risk assessment.

b. The Authority will request a delivery time slot at least 5 working days before collection is to be made. The Contractor will allocate a slot and notify the Authority at least 2 working days before collection.



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**APPENDIX 1 TO ANNEX A**

**AUTHORISED DEMANDERS**

[REDACTED -PERSONAL]

[REDACTED -PERSONAL]

[REDACTED -PERSONAL]

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**OFFICIAL-SENSITIVE COMMERCIAL****APPENDIX 2 TO ANNEX A****Procedure for the transfer of fuel from the Contractor's vehicle to the Authority's vehicle under Exercise Delivery**

The procedure detailed below is described from the point of view of the Authority's driver. All actions apply to the Authority's driver, less those highlighted in grey (actions 8 and 15), which require the Contractor's driver to open and close valves in his vehicle. The actions are solely related to the safe operation of the vehicle, and do not cover the accounting process.

**Self-loading - via Authority's vehicle pump**

Ser (a)	Method of operations (b)	Action (c)	Remarks (d)
1	<b>Normal Safety Precautions (NSPs)</b>	Stop vehicle, apply handbrake, switch off and isolate electrics, Deploy earth spike/clip Deploy wheel chocks Deploy fire extinguisher (approx 6m upwind) Deploy hazard Warning Signs (approx 15m) Check earth strap (serviceability and 70mm contact)	Check serviceability of fire extinguisher
2	<b>Vehicle Specifics</b>	Universal power interface kit (UPIK) Ensure overfill compartment drain valves are open Ensure air surge valve is open	
3	<b>Open Near-side and rear Compartments</b>	Open doors fully and secure via retaining rods	
4	<b>Quality, Quantity and Grade (QQGs)</b>	Visual fuel examination Confirm dips and paperwork Check vehicle markings	
5	<b>Bond</b>	Connect to bonding point of vehicle, tank or reservoir	Check serviceability
6	<b>Connect</b>	Connect armoured hose to dry break coupling(DB1) Or 4" cam lock connection (API1)	Check cleanliness and serviceability of connections
7	<b>Select</b>	Open ball valve (BV1)	
8	<b>Select</b>	Ensure other operator has selected valves	
9	<b>Pre Pump Checks</b>	Check emergency stop button is functional Set flow meter to zero Ensure both ball valves for rewind hoses are closed Check all gauges are serviceable Ensure flow rate control set to idle Ensure control block valves are closed	
10	<b>Engage Power Take off (PTO)</b>	Re engage isolated electrics Start vehicle engine Engage Power take off (PTO) switch Engage high idle	
11	<b>Start Pumping</b>	Open self-loading pneumatic control valve (1) on the control block Adjust flow rate to regulate as necessary	
12	<b>During Operation</b>	Monitor gauges, flow meter, pipe work and connections	Monitor continuously throughout operation
13	<b>Stop Pumping</b>	Reduce flow rate to idle Close self-loading pneumatic control valve (1) on control block Close ball valve (BV1)	Control valve 1 will close automatically when overflow prevention sensor is actuated
14	<b>Dis-Engage Power Take Off (PTO)</b>	Disengage high idle, Disengage PTO Switch off and isolate electrics	

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<b>15</b>	<b>Relieve Pressure</b>	Open ball valve (BV1) and foot valve (FV1), then close	Ensure other operator has closed valves
<b>16</b>	<b>Agree Dips</b>	Confirm quantities issued and received	
<b>17</b>	<b>Disconnect</b>	Disconnect and stow armoured hose	Replace protection caps
<b>18</b>	<b>Spillages</b>	Stow drip trays and recover any spillages or PCS	
<b>19</b>	<b>De bond</b>	Disconnect bonding cable and stow	
<b>20</b>	<b>Check</b>	All protection caps are fitted All valves are closed All ancillary equipment is securely stowed	
<b>21</b>	<b>Close all compartment doors</b>	Close and secure all compartment doors	
<b>22</b>	<b>Paperwork</b>	Complete paperwork MOD 7766	
<b>23</b>	<b>NSPs in reverse</b>	Retrieve hazard warning signs Retrieve fire extinguishers Retrieve wheel chocks Retrieve earth spike/clip Engage electrics	

**OFFICIAL-SENSITIVE COMMERCIAL****ANNEX B - Firm Price (Premium)****TABLE 1 SUPPLY AND DELIVERY TO STATION AREAS (MTFIs) - Weighting 50%**

Station Area	Firm* Price for Delivery (incl Labour overheads etc.) €/100 litres
Paderborn	[REDACTED - COMMERCIALY SENSITIVE]
Mönchengladbach	[REDACTED - COMMERCIALY SENSITIVE]

\*Not subject to variation.

**TABLE 2 SUPPLY AND DELIVERY TO EXERCISE LOCATIONS - Weighting 14%**

Exercise Location	Firm* Price for Delivery (incl Labour overheads etc.) €/100 litres
Sennelager	[REDACTED - COMMERCIALY SENSITIVE]
Mönchengladbach	[REDACTED - COMMERCIALY SENSITIVE]
Bergen-Höhne	[REDACTED - COMMERCIALY SENSITIVE]
Mainz Kastel	[REDACTED - COMMERCIALY SENSITIVE]
Grafenwöhr	[REDACTED - COMMERCIALY SENSITIVE]
Hohenfels	[REDACTED - COMMERCIALY SENSITIVE]
Burg bei Magdeburg	[REDACTED - COMMERCIALY SENSITIVE]

\*Not subject to variation.

**TABLE 3 SUPPLY AND DELIVERY TO AD HOC EXERCISE LOCATIONS BY DISTANCE - Weighting 6%**

Distance (From Exercise Location)	Firm* Price for Delivery (incl Labour overheads etc.) €/100 litres
1 -100 km	[REDACTED - COMMERCIALY SENSITIVE]
101 - 200 km	[REDACTED - COMMERCIALY SENSITIVE]
201 - 300 km	[REDACTED - COMMERCIALY SENSITIVE]

\*Not subject to variation.

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**TABLE 4 UNIT COLLECTIONS - Weighting 30%**

Exercise Location	Depots/Postcode (within 300km round trip of Exercise Location)	Firm* Price (Premium) for Unit Collect (incl Labour overheads etc.) €/100 litres
33104 Sennelager	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]
41061 Mönchengladbach	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]
29303 Bergen-Höhne	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]
55252 Mainz Kastel	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]
92655 Grafenwöhr	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]
92366 Hohenfels	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]
39288 Burg bei Magdeburg	[REDACTED - COMMERCIALY SENSITIVE]	[REDACTED - COMMERCIALY SENSITIVE]

\*Not subject to variation.

## OFFICIAL-SENSITIVE COMMERCIAL

## ANNEX C - Pricing Letter Exercise Location



Ministry  
of Defence



DE&amp;S LDOC Fuels Commercial

0306 XXXX

XXXXX

Ministry of Defence

Defence Equipment &amp; Support

Cedar 3A #3360

MOD Abbey Wood

Bristol BS34 8JH

Date:

Our Ref :

**CONTRACT NUMBER: DFAP/0036 – THE SUPPLY OF BULK GROUND FUELS TO  
GERMANY**

**PRICING LETTER NUMBER: X**

Dear Sirs,

Delivery of Diesel (F-54) EN590 from [Supply Location] to [Delivery Location] on [Date]

1. The Authority hereby accepts your quoted firm price of € (Euro) per 100 Litres of fuel for the distance of XX Kilometres. The fuel price will be determined monthly in arrears based on the "O.M.R" in accordance with the Terms and Conditions of Contract and requests that you proceed with the task. The breakdowns are detailed as follows:

Kilometres:	XX
Firm price of € (Euro) per 100 Litres	€XX.XX
No of deliveries	X
Additional Costs (if applicable)	: €X.XX
Total Delivery Cost	€X.XX (Firm Price per 100 litres multiplied by volume of fuel)

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Total Price on Letter

€X.XX

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2. Please acknowledge receipt of this Pricing Letter by e-mail. This journey can be added to the monthly price proposal as it has been validated and approved.
3. All other Terms, Conditions and Pricing of Contract DFAP/0036 remain unchanged.

Yours Faithfully


OFFICIAL-SENSITIVE COMMERCIAL



Ministry  
of Defence



DE&amp;S LDOC Fuels Commercial

0306 XXXX XXXXX Ministry of Defence 

Defence Equipment &amp; Support

Cedar 3A #3360

MOD Abbey Wood

Bristol BS34 8JH

Date:

Our Ref :

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**CONTRACT NUMBER: DFAP/0036 – THE SUPPLY OF BULK GROUND FUELS TO GERMANY**

**PRICING LETTER NUMBER: X**

Dear Sirs,

Unit Collet Supply of Diesel EN590 from [Supply Depot Location] on [Date]

1. The Authority hereby accepts your quoted firm price of € (Euro) per 100 Litres of fuel from XXX Depot. The fuel price will be determined monthly in arrears based on the "O.M.R" in accordance with the Terms and Conditions of Contract and requests that you proceed with the task.
2. Please acknowledge receipt of this Pricing Letter by e-mail. This Depot can be added to the monthly price proposal as it has been validated and approved.
3. All other Terms, Conditions and Pricing of Contract DFAP/0036 remain unchanged.

Yours Faithfully

OFFICIAL-SENSITIVE COMMERCIAL