

TERMS AND CONDITIONS FOR THE PURCHASE OF WORKS

SECTION A General Conditions

1. General

- 1.1 These terms and conditions in Sections A and B and any Special Conditions (together the "**Conditions**") (together, the "**Agreement**") apply to Contracts made between Buyer and Supplier.
- 1.2 Supplier shall provide the Works to Buyer pursuant to Orders which will be subject to the Conditions. Each Order together with the Conditions and any Specifications (as applicable) shall constitute a separate agreement (each a "**Contract**"). The Conditions are the only terms and conditions on which Buyer will purchase Works from Supplier and will apply to the exclusion of all other terms and conditions, including any which Supplier purports to apply under any quotation, Order acknowledgement, acceptance or confirmation of Order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing except for any terms and conditions, policies or other provisions which are specifically referenced or referred to in this Section A, which shall be deemed to be effectively incorporated into the relevant Contract.
- 1.3 Each Contract together with the relevant Specification (if any) contains all the terms which Supplier and Buyer have agreed in relation to the Works to be provided under that Contract and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Works. Supplier acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Buyer which is not set out in the relevant Contract or the Specification. Nothing in this Clause 1.3 excludes any liability which one party has to the other in respect of any statements, promises or representations made fraudulently.
- 1.4 The Supplier has been appointed by Buyer to provide the Works on a non-exclusive basis and on the basis of the Supplier's response to the RFP. Buyer does not in any way undertake or represent that the Conditions will generate a specified or minimum volume of business or revenue for the Supplier and the volume of Works that may be required by Buyer from time to time under or in connection with the Conditions may vary.
- 1.5 In the event of any conflict between any documents contained in this Agreement or any Contract, it shall be resolved by applying the documents in the following order of precedence (prevailing document first):
 - 1.5.1 any applicable Order;
 - 1.5.2 any applicable Special Conditions;
 - 1.5.3 the terms and conditions set out in Sections A and B of this Agreement; and
 - 1.5.4 any ancillary documents or documents incorporated by reference into this Agreement (only in accordance with Clause 1.2).

2. Ordering Process

- 2.1 The Buyer shall be entitled from time to time to, the provision of goods and/or services by the Supplier by submitting an order form (each an "**Draft Order**"). Supplier will, within 5 days of the date of

the Draft Order, accept or reject (only in accordance with Clause 2.3) each Draft Order by notifying the Buyer in writing. If Supplier does not accept or reject a Draft Order within 5 days of the date of the Draft Order, the Draft Order is deemed to be accepted by Supplier. If Supplier commences work in relation to a Draft Order it is deemed to have accepted the Draft Order.

- 2.2 Each Draft Order shall contain the following information (if applicable):
 - 2.2.1 a description of the Works by part number and quantity required (other than blanket Orders) or service description;
 - 2.2.2 the required delivery date(s), delivery location and transportation instructions (in respect of Goods) or performance dates (in respect of Services);
 - 2.2.3 price, including unit and total Order price;
 - 2.2.4 any other terms or requirements including any Special Conditions and any Specification.
- 2.3 Supplier may only reject a Draft if:
 - 2.3.1 the Draft Order relates to Works that would require the Supplier to provide goods or services that are not of a type generally provided by the Supplier and are not within the Supplier's expertise or capability; and/or
 - 2.3.2 the Supplier (acting reasonably and in good faith) considers that the Draft Order is insufficiently clear.
- 2.4 If Supplier rejects any Draft Order in accordance with Clause 2.3.2, the Supplier shall notify Buyer in writing at the same time as the rejection of the why it considers the Draft Order is insufficiently clear and how it recommends that it may be clarified. The Buyer may submit a revised Order taking into account the recommendations of the Supplier.
- 2.5 Supplier will comply with any dates for performance of the Works (including delivery of any Goods) as set out in the Order.
- 2.6 Supplier will procure all components necessary to fulfil Orders issued by Buyer and will ensure sufficient capacity is available to achieve the quantities and delivery dates specified in such Orders. If Buyer supplies any forecast, this is for planning purposes only and does not create a commitment on the part of Buyer to place any Order.
- 2.7 Buyer may at any time request changes to any Order which in Buyer's reasonable opinion are not complicated by providing written notice to the Supplier, such changes may include changes in the drawings or specifications, method of shipment, quantities, packing or time or place of Delivery and the parties shall seek to agree any such changes without the need for those changes to be dealt with in accordance with Clause 28. If the parties do not agree, the Buyer may request the change in accordance with Clause 28.

3. Miscellaneous

- 3.1 Any notice in relation to any Order or Contract shall be in writing and sent to the relevant party at its address as set out in Section C (or such other address or email address as shall have been notified to the other party in writing in accordance with this Clause 3), and shall be delivered or sent:

- 3.1.1 by email, except that if an automatic electronic notification is received by the sender within 24 hours after sending the email, informing the sender that the email has not been delivered to the recipient or that the recipient is out of the office, that email will be deemed not to have been delivered or sent;
- 3.1.2 if the Buyer's and Supplier's respective addresses for service are in the same country, by registered or recorded delivery or local equivalent postal service which provides written evidence of delivery; or
- 3.1.3 if the Buyer's and Supplier's respective addresses for service are in different countries, by courier provided that such courier obtains a signature on behalf of the recipient.
- 3.2 Such notice shall be deemed to have been given:
- 3.2.1 if sent by email in accordance with Clause 3.1.1, on the first normal business day in the country of receipt following the date of sending;
- 3.2.2 if sent in accordance with Clause 3.1.2, 48 hours after the date on which the registered or recorded delivery is posted; and
- 3.2.3 if sent in accordance with Clause 3.1.3, when it is delivered to the appropriate address, as evidenced by signature.
- 3.3 The relationship of Buyer and Supplier under each Contract is that of independent contractors and neither party shall act or represent or hold itself out as having authority to act as an agent or partner of the other party or to bind or commit the other party to any obligations.
- 3.4 Each member of Buyer's Group is entitled to enforce all the rights of Buyer under these Conditions, subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999, but the parties may vary these Conditions without seeking the consent of any of the Buyer's Group. Except as set out in this Clause 3.4 the parties do not intend that these Conditions are enforceable by any person under the Contracts (Rights of Third Parties) Act 1999 or otherwise other than the parties and the Buyer's Group.
- 3.5 If any part of any Contract is found by any court or tribunal, of competent jurisdiction to be illegal, invalid or unenforceable then that provision will apply with whatever minimum level of deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the parties' commercial intention. Any modification to or deletion of a provision or part-provision under this Clause 3.5 shall not affect the validity and enforceability of the rest of the relevant Contract.
- 3.6 Any failure or delay by Buyer to exercise any right, power or remedy will not operate as a waiver of it.
- 3.7 Buyer may assign, delegate, license, hold on trust or subcontract all or any of its rights or obligations under any Contract.
- 3.8 Supplier shall not assign, delegate, license, hold on trust or subcontract all or any of its rights or obligations under any Contract without Buyer's prior written consent. Supplier remains liable for the activities and omissions of its sub-contractors.
- 3.9 Supplier will not use any alternative supplier of any part or component of any Works, once those Works have been qualified for use by Buyer or Buyer's customer, without the prior written consent of Buyer.
- 3.10 Supplier will not make any announcement or press release relating to these Conditions, any Draft Order, any Order or Contract without Buyer's prior written consent.
- 3.11 Each Contract, these Conditions and this Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of which taken together shall constitute one and the same instrument.
- 3.12 Save as otherwise expressly provided in any Contract and/or this Agreement, termination or expiry of any Contract and/or this Agreement for any reason shall not affect:
- 3.12.1 the continuing rights and obligations of the Supplier and Buyer under: this Clause 3.12 and Clauses 1.3, 1.5, 3, 4, 5, 6, 7.2, 9, 10, 12, 13.6, 14, 16, 19 and 23; and
- 3.12.2 any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

4. Disputes and Governing Law

- 4.1 The intent of the parties is to identify and resolve any Dispute promptly. Each party agrees to notify the other party of any Dispute in reasonable detail in writing as soon as possible after it arises, referring expressly to this Clause 4.1 and to seek to resolve the Dispute as quickly as possible. Supplier will continue to perform its obligations under each Contract despite any Dispute.
- 4.2 If a Dispute is not resolved within 30 days of notification by one party to the other under Clause 4.1, the Dispute shall be referred to and finally resolved by arbitration in London conducted in the English language by three arbitrators pursuant to the London Court of International Arbitration ("LCIA") Rules, which are deemed to be incorporated by reference into this Clause 4.2, except that unless the parties agree otherwise, each party shall nominate an arbitrator, and the third arbitrator, who shall act as chair of the tribunal, shall be chosen by the two arbitrators appointed on behalf of the parties. If the chair is not chosen and nominated to the LCIA Court for appointment within 30 days of the date of appointment by the LCIA Court of the later of the two party-nominated arbitrators to be confirmed, the chair shall be appointed by the LCIA Court.
- 4.3 The formation, existence, construction, performance and validity of each Contract and any dispute or claim arising out of or in connection with it, including any non-contractual obligations, will be governed by English law. The application of the United Nations Convention on the International Sale of Goods is expressly excluded.
- 4.4 Neither party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this Clause 4, such Clause not applying in respect of any circumstances where such remedies are sought.

5. Import/Export

- 5.1 Supplier shall promptly notify Buyer in writing of any export, re-export, import or sanctions laws and regulations that may apply to the Works supplied under the Order which shall include those laws and regulations administered and enforced by the following governments or supranational union and their relevant departments and agencies:
- 5.1.1 the U.S.;
- 5.1.2 the EU and its Member States;

5.1.3 the UK; and
 5.1.4 any country from which Supplier exports, (collectively "**Export/Import Laws**"). Supplier represents and warrants that it shall comply with all applicable Export/Import Laws. Supplier shall obtain, in a timely manner and at its own expense, any export or import authorisations, consents or permits applicable to the Works supplied under the Order, to avoid delay in Delivery, and where it fails to do so this will not amount to an excusable delay. In particular, Supplier shall (i) obtain all required authorisations, consents or permits from the U.S. Government and (ii) provide written notice to Buyer, prior to transferring or releasing Technical Data or Technology (as such terms are defined in 22 C.F.R. §120.10 and 15 C.F.R. § 772, respectively) related to each Contract to any Foreign Person (as such term is used or defined in 22 C.F.R. §120.16 and 15 C.F.R. §772). Supplier agrees to bear sole responsibility for all record keeping requirements associated with the use of any authorisations, consents or permits or its reliance on any exceptions or exemptions from the requirement to obtain any authorisations, consents or permits.

- 5.2 Supplier shall notify Buyer as soon as reasonably practicable of any assistance Supplier requires from Buyer in order for it to comply with its obligations pursuant to this Clause 5.
- 5.3 Supplier's failure to comply with any of the provisions of this Clause 5 is a material breach not capable of remedy in accordance with the termination provisions of Clause 13.1.

6. Federal Acquisition Regulation ("FAR")/Defense Federal Acquisition Regulation Supplement ("DFARS")/Defence Contract Conditions ("DEFCONs")

6.1 The FAR/DFARS/DEFCON clauses listed or referred to in the Order are incorporated in each Contract by reference with the same force and effect as if they were included in full text. Unless otherwise expressly noted in this Clause 6.1, where necessary to make the DEFCON, FAR and DFARS clauses applicable to the Order and to protect Buyer's interest, the words "**Government**," "**Authority**," "**DOD**," "**MOD**," "**Representative**" and "**Contracting Officer**" each shall mean "Buyer" or (when appropriate) "**Buyer and the Authority/Representative/Contracting Officer**," the words "**Contractor**" or "**Offeror**" shall mean "**Supplier**," and the words "Contract" and "**Schedule**" shall refer to the relevant "**Contract**" or the applicable Order. The definitions outlined above are intended to create legal relationships between Buyer and Supplier identical to, but not dependent on, the relationship that the FAR and DFARS intend to establish between the "**Government**" and a "**Contractor**". It is not the intent of Buyer that any such substitution shall result in the disclosure of a party's proprietary and /or confidential cost and pricing data except that if Buyer is obliged to disclose such data in accordance with the US legislation Truthful Cost or Pricing Data Act (known as the Truth in Negotiations Act), this shall not be a breach of such intent nor of any confidentiality agreement or provision between the parties.

7. The Works

- 7.1 Supplier represents and warrants that:
 - 7.1.1 it will provide the Works to Buyer precisely in accordance with the relevant Contract;
 - 7.1.2 it shall use all best skill and care and shall

- perform its obligations in accordance with each Contract;
 - 7.1.3 it will provide the Works to Buyer and perform this Agreement and each Contract in accordance with Good Industry Practice;
 - 7.1.4 title to the Works under a Contract shall transfer free from any security interest, lien or encumbrance;
 - 7.1.5 it has the rights to grant the licence rights set out in these Conditions and in each Contract;
 - 7.1.6 the Services are of good quality and the Goods will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and the Works are provided or performed using workmanship and materials in accordance with Good Industry Practice;
 - 7.1.7 the Works are and will be fit for their intended purpose and use including any purpose and use made known to Supplier by Buyer;
 - 7.1.8 the Works are free from defects in design, materials and workmanship and hazards to health;
 - 7.1.9 the Works meet the Specification (if any);
 - 7.1.10 the Works are new and not used, refurbished, repaired or reconditioned and not of an age that deteriorates or impairs their usefulness, safety or operation;
 - 7.1.11 the Works do not infringe the rights of any third party;
 - 7.1.12 it shall not introduce into the Works and/or any of Buyer's or any member of the Buyer's Group's computer systems anything, including any Virus, computer program code, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:
 - a) impair the operation of the Works or any other computer systems or programs in the possession of Buyer or any member of the Buyer's Group or impair the receipt of the benefit of the Works; or
 - b) cause loss of, or corruption or damage to, any program or data held on any computer systems or other systems;
 - 7.1.13 it shall take all precautions in accordance with Good Industry Practice to ensure that the software comprising or comprised in any Works does not introduce any Viruses into the Works, any Buyer software or any of Buyer's hardware or computer programmes or any other information technology equipment or platforms in its possession, control or dominion or any equipment and/or software of Buyer or used by the Supplier to provide any Works including that it shall check all software comprised in the Works with an up-to-date virus checker and take any appropriate remedial steps immediately and prior to its delivery to Buyer; and
 - 7.1.14 no Works or part, component or material supplied under a Contract are counterfeit and it has developed processes and/or procedures that are adequate to assure that none of the Works, or part, component or material supplied under any Contract shall be counterfeit.
- 7.2 Supplier will, at no additional fee or sum, for the period of 3 years from Delivery of the Goods and/or performance of the Services (as applicable):

- 7.2.1 provide the warranties and representations in Clause 7.1; and
- 7.2.2 correct or procure the correction promptly, and no later than 5 days from date of notification by Buyer to Supplier, of any failures of the Works to perform in accordance with any Contract. Any correction by Supplier shall be deemed to be Works for the purposes of the relevant Contract. Supplier shall be responsible for all costs (including delivery and collection charges) and delays incurred by Supplier and Buyer in respect of any faulty Works or failure to meet Supplier's obligations under each Contract.
- 7.3 Supplier shall at all times comply with all laws and regulations applicable (a) to Supplier; and (b) to the provision of the Works to Buyer; and (c) any other laws or regulations pertaining to compliance with each Contract.
- 7.4 Supplier will obtain and maintain all permits, registrations, consents, licences and approvals of governmental authorities and/or standard setting agencies that are necessary or advisable to provide the Works.
- 7.5 Supplier shall Deliver the Works at the time(s) and date(s) scheduled and specified in the Order or, if agreed with the Buyer in writing, up to seven days prior to the date(s) specified in the Order, provided that such earlier Delivery does not entitle Supplier to invoice until the later of the scheduled due date for invoicing set out in the Order and the actual Delivery date.
- 7.6 Time for the performance of all obligations of Supplier under a Contract is of the essence.
- 7.7 If Supplier becomes aware of any matters which may affect the performance of its obligations under any Contract then it will promptly notify Buyer.
- 7.8 Supplier is responsible for all tasks and activities (including ancillary tasks and activities) which are necessary for the proper performance of its obligations under each Contract, whether such tasks and activities are expressly set out in the relevant Contract or not.
- 7.9 Without prejudice to Buyer's right to terminate under Clause 13, where Supplier has failed to comply with an obligation under any Contract, Buyer may issue a Non-Conformance Report ("**NCR**"). Supplier will ensure it completes each remedial action in the NCR by the deadline specified in the NCR or if no deadline is specified, within a reasonable time.
- 7.10 Supplier may not discontinue the general supply to its customers of goods and services of the type constituting the Works (or any part thereof) during the term of any Contract including any warranty period or support service period.
- 7.11 Subject to Clause 7.10, Supplier may provide notice of not less than twenty four months of the discontinuance of the supply of parts or components in the Works and during said notice period Supplier shall, at Buyer's sole discretion, either:
 - 7.11.1 provide a form, fit and function replacement at no additional cost to Buyer;
 - 7.11.2 procure such reasonable last time quantity as directed by Buyer for such parts or components. Unless otherwise agreed between the parties, Supplier shall procure and store such parts or components at no additional charge to Buyer.

8. Assurance Tests

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- 8.1 Buyer may undertake certain testing or inspections in respect of any Works supplied by Supplier. Such testing ("**Testing**") shall be in accordance with the process as set out in the relevant Special Conditions. Buyer's performance of any Testing shall not remove or affect Supplier's obligations to comply with the terms of any Contract nor act to limit the Buyer's remedies in respect of any Works which do not conform or perform in accordance with the relevant Contract.

9. Intellectual Property Rights

- 9.1 Subject always to Clause 9.3, all Intellectual Property Rights vesting in either party prior to the date of any Contract shall remain vested in such party notwithstanding any other provision of the relevant Contract.
- 9.2 The parties agree that all Intellectual Property Rights in Buyer Data are exclusively vested in Buyer and Buyer's Group and that no member of Supplier's Group shall gain any rights to any Buyer Data or any computer programs (or modifications relating thereto) proprietary to any member of the Buyer's Group nor, except to the extent expressly licensed for use by Supplier in the relevant Contract, have any right to use or make any modification to any such items.
- 9.3 All Intellectual Property Rights in any Goods, Developments and other materials including, but not limited to designs, plans, specifications, models, documents, software including source codes and other records or information created, developed or made by or on behalf of Supplier in connection with the performance of each Contract or to enable the performance of any Contract shall, at the date of the Order or (if later) on creation of the rights, vest in Buyer. Supplier hereby assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to Buyer.
- 9.4 Supplier grants and procures the grant from each member of Supplier's Group and each third party, to each member of Buyer's Group, of a royalty-free, non-exclusive, perpetual, world-wide and irrevocable licence (with the right to grant sub-licences) to use, copy, develop and make Modifications in respect of all materials, information, data and documentation including but not limited to as designs, plans, specifications, models, documents, software including source codes and other records or information made available or provided by or on behalf of the Supplier in connection with any Contract, in which the Intellectual Property Rights are owned by Supplier, any member of Supplier's Group or a third party.
- 9.5 To the extent Buyer is able to, without infringing any right of or becoming liable to make any payment to, any third party, the Buyer shall, on Supplier's written request, grant to Supplier a royalty-free, non-exclusive, non-transferable licence (with the right to sub-license only to a subcontractor approved by Buyer under Clause 3.8) to use, develop and make Modifications in respect of any Intellectual Property Rights vested in a member of Buyer's Group provided that such licence shall be so far as necessary for the Supplier to provide the Works or to otherwise fulfil its obligations under any Contract.
- 9.6 Supplier agrees that it will promptly share any inventions, improvements, processes, programs, standards, techniques, developments, designs, know how or other original matters to with the Buyer

whether capable of registration or not, associated with the Works which, at any time during the performance of each Contract Supplier might devise or discover. Supplier further agrees that all Intellectual Property Rights which arise in relation to any Contract, including after that Contract has terminated, shall vest in Buyer absolutely and Supplier hereby assigns and will procure the assignment to Buyer of all such Intellectual Property Rights.

- 9.7 Supplier warrants that the licence granted at Clause 9.4, the Works and any Developments will not infringe a third party's Intellectual Property Rights. Supplier will indemnify, keep indemnified and hold harmless Buyer and Buyer's customers against all claims, proceedings, actions, damages, costs, expenses and any other liabilities arising from a claim or allegation that the Works and/or the licence granted at Clause 9.4 and/or any Developments infringe a third party's Intellectual Property Rights.
- 9.8 Supplier shall immediately notify Buyer if any Works and/or Intellectual Property Right or part thereof, shall infringe or breach any law or any third party's Intellectual Property Rights and (without prejudice to Buyer's other rights) shall at no additional cost to Buyer and as soon as reasonably practicable provide to Buyer, the Buyer's Group and Buyer's customers:
- 9.8.1 the right to continue to use the Works and/or Intellectual Property Rights; or
- 9.8.2 replacement Works and/or Intellectual Property Rights which shall perform in a manner identical in all material respects to such Works and/or Intellectual Property Right as it was prior to such replacement.
- 9.9 Supplier undertakes not to:
- 9.9.1 copy Buyer's Intellectual Property Rights or products (other than as authorised under the relevant Contract or where strictly necessary to provide the Goods or Services in accordance with the relevant Contract) nor otherwise reproduce the same;
- 9.9.2 utilise, customise, modify or create derivative works of, translate, adapt or vary Buyer's Intellectual Property Rights and products except as expressly permitted in the relevant Contract or where strictly necessary to provide the Goods or Services in accordance with the relevant Contract;
- 9.9.3 disassemble, decompile or reverse engineer Buyer's Intellectual Property Rights;
- 9.9.4 license or sell any Buyer's Intellectual Property Rights or products, or any part thereof, to any third party; and
- 9.9.5 do anything to affect the validity or any of the Intellectual Property Rights in the Developments at any time during or after termination or completion of any Contract and will render all assistance to Buyer to obtain and maintain such Intellectual Property Rights.
- 9.10 Supplier shall, both during the continuance and following termination of the relevant and any Contract for any reason whatsoever, at the request and reasonable expense of Buyer, apply for, and do all acts and things necessary to obtain registration or other protection in respect of the Intellectual Property Rights in the Developments in any part of the world. Supplier shall, at its own expense, procure that any third party shall execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the rights granted and/or assigned in accordance with this Clause 9.

10. Quality and Inspection

- 10.1 Supplier's quality system shall be compliant with the requirements of ISO9001 (for Goods for normal commercial supply) and AS9100 (for Goods for aerospace use) and in addition with any quality requirements set out in the Special Conditions.
- 10.2 Supplier will maintain detailed quality control and manufacturing sub-assembly and component Traceability records for a period of at least 12 years from the date of last supply of the Works or such extended period as is set out in the Special Conditions. Supplier shall then either agree to continue holding the records or shall offer Buyer, at no charge, the option to transfer them for archiving or provide electronic copies to Buyer. No record shall be destroyed without Buyer's written approval.
- 10.3 Buyer and its nominated representatives and Buyer's customers and nominated representatives may at any time on 2 Business Days' notice inspect any premises and carry out an audit or check of any aspect of performance of any Contract by Supplier (including to verify any charges or other amounts charged by Supplier in accordance with that Contract) and shall be permitted to observe work being performed by Supplier and its subcontractors at any premises where Work is being carried out. Buyer may appoint a third party (which shall not be a competitor of Supplier) to act as its nominated representative under this Clause 10.3.
- 10.4 If as the result of such inspection and/or audit Buyer is not satisfied that the Works provided pursuant to any Contract comply or will comply in all respects with the relevant Contract and Buyer so informs Supplier within 30 days of inspection and/or audit (as applicable) Supplier will take all necessary steps to ensure compliance and the Buyer may exercise a right of step-in in accordance with Clause 29.1. Without prejudice to any other rights of Buyer under any Contract, any failure of this obligation by Supplier will be a material breach which is not capable of remedy.
- 10.5 Supplier shall and shall ensure that each of its subcontractors approved by Buyer under Clause 3.8 shall:
- 10.5.1 comply with Buyer's supplier code of conduct, as updated from time to time, accessible on Buyer's website;
- 10.5.2 comply with all Buyer's policies relevant to the supply of the Works.
- 10.6 The parties shall each bear their own costs and expenses in respect of any audit under this Clause 10, unless that audit identifies any breach of any Contract by Supplier, in which case Supplier shall reimburse Buyer immediately upon notification of such from the Buyer for and in respect of any and all costs of Buyer incurred by or on behalf of it in connection with the relevant audit.

11. Offset Credit and Cooperation

- 11.1 All offset or counter trade credit value resulting from any Contract shall accrue solely to the benefit of Buyer. Buyer shall, to the exclusion of all others, be entitled to all domestic and foreign offset credits, or other similar benefits, which may arise in connection with a Contract (including subcontracts relating to the Works). The Supplier will not use these credits/benefits towards any other entities than Buyer. Buyer has the exclusive right to apply the value of foreign content in the Works or any deliverables to the offset program of its choice.
- 11.2 Supplier shall also support Buyer, in any manner reasonably requested by Buyer, and at no additional

cost to Buyer, in meeting Buyer's offset requirements in the amounts and in the countries specified by Buyer. Supplier shall furnish upon request any certificates or other documents reasonably required by Buyer in fulfilment of Buyer's offset obligations, including, any documents transferring title to the offset credits to Buyer, any documents perfecting any rights granted to Buyer in this Clause 11, and take other action as Buyer deems appropriate in order to protect Buyer's interests in offset credits.

12. Liability and Indemnity

- 12.1 Supplier shall be liable to Buyer for all loss, liability, damages, costs, expenses and any other sums incurred or charged that Buyer may suffer or incur in connection with any acts or omissions of Supplier otherwise than in accordance with the relevant Contract.
- 12.2 Supplier shall indemnify, keep indemnified and hold harmless Buyer from and against any claims by third parties which are caused by or arise out of or in connection with:
- 12.2.1 any act or omission of Buyer carried out pursuant to instructions of Supplier; or
- 12.2.2 any breach by Supplier of any terms of any Contract.
- 12.3 Neither party limits its liability for:
- 12.3.1 death or personal injury arising as a result of its negligence or the negligence of its employees; or
- 12.3.2 fraud or fraudulent misrepresentation; or
- 12.3.3 gross negligence; or
- 12.3.4 wilful misconduct; or
- 12.3.5 any matter for which the relevant party is not permitted by law to exclude or limit its liability.
- 12.4 Subject to Clause 12.3, Buyer's aggregate Liability arising under or in connection with each Contract is limited to 100% of the total price under that Contract. In the event there is no Contract in effect at the point at which the liability arose, the Buyer's aggregate Liability arising under or in connection with this Agreement shall not exceed the total price paid under the first Contract entered into between the parties.
- 12.5 Except as provided in Clause 12.3, Buyer will have no Liability under or in connection with this Agreement and/or any Contract in respect of:
- 12.5.1 loss of profits, loss of business, loss of revenue, loss of contracts, loss of goodwill, loss of anticipated earnings or savings; or
- 12.5.2 loss of use or value or damage of any data or equipment (including software), wasted management, operation or other time; or
- 12.5.3 any special, indirect, punitive, incidental or consequential loss, in each case howsoever arising.
- 12.6 Supplier shall, and shall ensure all its sub-contractors, maintain at all times insurance cover in respect of the Works and its liabilities under each Contract, including public and products liability, all risks property and where the Works include advisory, consultancy or professional services, professional indemnity insurance and any other insurance required by law. Satisfactory evidence of such insurance shall be provided to Buyer on request. Supplier's public and product liability insurance shall have a limit of at least [US\$50,000,000 (fifty million United States dollars)] per event or series of related events and all other insurances shall have a limit of at least [US\$10,000,000 (ten million united states dollars)].

13. Termination

- 13.1 Buyer may terminate a Contract by notice in writing to Supplier if:
- 13.1.1 immediately if Supplier commits a material breach of that Contract which is not capable of remedy, or which if capable of remedy, Supplier fails to remedy within 30 days of a written notice setting out the breach and requiring it to be remedied;
- 13.1.2 immediately if Supplier breaches any part of Clause 9 (Intellectual Property Rights) or Clause 14 (Confidentiality Obligations); or
- 13.1.3 immediately if there is a Change of Control of Supplier or any of the events in Clause 13.4 apply;
- 13.1.4 on 10 days' written notice if the Supplier does, or omits to do something, which will cause adverse publicity about Buyer or any member of its Group or will weaken the public image and reputation of Buyer or any member of its Group; or
- 13.1.5 immediately if Supplier fails to comply with a NCR in any material respect.
- 13.2 Supplier may terminate the relevant Contract(s) by notice in writing to Buyer if Buyer fails to pay any sum due and payable under the relevant Contract(s) and which is not disputed by Buyer within the period of 45 days after receipt by Buyer of a reminder notice (which may only be sent after the due date for payment) requiring payment, specifying the sum outstanding and the Contract(s) to which it relates and referring expressly to this Clause 13.2 if the sum outstanding is not paid within such 45 day period.
- 13.3 Either party may terminate all Contracts immediately by notice in writing if the other party is Insolvent.
- 13.4 Supplier shall promptly notify Buyer in writing if Supplier or any of its Group:
- 13.4.1 purchases, acquires or otherwise has any interest in a Direct Competitor of Buyer; or
- 13.4.2 is purchased by or has any interest in it bought, acquired or otherwise transferred to a Direct Competitor of Buyer.
- 13.5 A right of Buyer to terminate any Contract will immediately give rise to the right for Buyer to terminate any other Order with Supplier (and to revoke any Draft Order) or contract (including, for the avoidance of doubt, any other Contracts) entered into with Supplier.
- 13.6 Supplier will provide or return, as applicable, to Buyer all Buyer's Property, Tooling, Developments, Buyer Data and any other records, information or materials provided by or on behalf of Buyer in connection with any Contract and that is within Supplier's possession or under its control within 30 days of the date the Contract terminates or performance is completed, whichever occurs first.
- 13.7 Buyer is entitled to cancel any Order in whole or in part by giving written notice to Supplier at any time prior to delivery of the Works in which event Buyer's sole liability will be to pay to Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

14. Confidentiality Obligations

- 14.1 Each party will keep confidential any and all Confidential Information that it may acquire from the other party and agrees that:

- 14.1.1 it will only use such Confidential Information to perform its obligations and exercise its rights under these Conditions (the "**Purpose**"); and
- 14.1.2 it will only disclose such Confidential Information to its employees, officers or representatives who need to know the information for the Purpose, and that it is responsible for any breach of this Clause 14.1 by any of them.
- 14.2 The obligations in Clause 14.1 will not apply to any Confidential Information which is publicly available (other than due to a breach of confidentiality) or where disclosure is required to comply with any law or an order of a court of competent jurisdiction.
- 14.3 On termination or expiry of a Contract and at the request of a party, so far as technically feasible the other party will destroy all Confidential Information it has received in connection with that Contract and certify it has done so.
- 14.4 Supplier will not make any public announcement, or permit any public announcement to be made, relating to any Order, Contract or Works, or make any use of Buyer's name, without in each case the prior written consent of Buyer, except and to the extent only as required by law or by any governmental or regulatory authority.

15. Price and Payment

- 15.1 Supplier shall be entitled to invoice the Buyer for any charges due in accordance with the Special Conditions in respect of any Works performed. Invoices shall include: Order number, descriptions of the Works, sizes (if applicable), quantities (if applicable), prices and totals.
- 15.2 In consideration of the supply of the Goods and the performance by the Supplier of the Services, Buyer shall pay to Supplier any amounts properly and validly invoiced in accordance with this Clause 15. Payments shall be made in the currency of payment as set out in the Order within 60 days following the first day of the month immediately following the month during which Buyer has received a correct invoice which has been prepared and delivered by Supplier to Buyer in accordance with this Clause 15. All payments shall be made to Supplier at the address shown in the Order. Buyer may make adjustments or withhold payment if Buyer reasonably deems that any invoices are not submitted in accordance with these Conditions, due to any shortages or failures, or for any failure to comply with the requirements of the Order.
- 15.3 The price and any other sums payable by Buyer are gross amounts inclusive of:
 - 15.3.1 any value added tax and all other foreign, federal, local, sales or use taxes;
 - 15.3.2 all charges including licence fees, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Works to Buyer's specified place of delivery; and
 - 15.3.3 any duties, tariffs, imposts and levies.
- 15.4 Buyer may demand from Supplier a refund in respect of any over-payment made by Buyer pursuant to any Contract. Supplier shall immediately refund any over-payment made by the Buyer and demanded in accordance with this Clause 15.4 within 10 Business Days of receipt except to the extent that it *bona fide* disputes any or all of the amount claimed, in which case Supplier shall pay Buyer the amount that is not in dispute but Supplier need not pay the amount that is in dispute until the dispute has been resolved in accordance with Clause 4.

- 15.5 The Buyer may invoice the Supplier monthly in arrears in respect of any payments which become due to it in accordance with any Contract and the Supplier shall pay the invoiced price in the currency of payment as set out in the relevant Order within 30 days of receipt of any invoice in accordance with this Clause 15.5.
- 15.6 In the event of any delay in payment by either party of any undisputed amount owed (and not withheld in accordance with Clause 15.7) for more than 30 days after the due date for payment, the other party may charge interest at the rate of 2% per annum above the base rate from time to time of the Bank of England until payment has been made in full.
- 15.7 Without prejudice to any other remedies which may be available to Buyer, if the Supplier fails to supply the Goods or perform the Services (or any part thereof) in accordance with the relevant Contract, Buyer shall have the right to suspend payment of such of the charges as it considers (acting reasonably) should be allocated to such Goods and/or Services ("**Relevant Charges**"), until the Goods and/or Services have been supplied, after which payment of the Relevant Charges so suspended shall (subject to any other rights of Buyer to suspend or withhold payment) be payable to the Supplier in accordance with this Clause 15.
- 15.8 Buyer may set off, deduct or withhold from any liability owed to the Supplier under or in connection with any Contract any liability of the Supplier to Buyer in connection with the same or any other Contract, whether present or future, actual or contingent, liquidated or unliquidated, disputed or undisputed and whether owed jointly or severally or in any other capacity and irrespective of the currency of its denomination (and for this purpose may convert the currency of any liability).
- 15.9 Notwithstanding Clause 30, if any payment to Buyer under an indemnity pursuant to any Contract is subject to deduction or withholding for or on account of taxation, or if Buyer is subject to taxation on such payment, the Supplier shall pay an additional amount to Buyer as will ensure that Buyer shall receive, after the deduction, withholding or taxation, the same amount it would have received in the absence of the deduction, withholding or taxation.

16. Security

- 16.1 Supplier's employees or Representatives visiting or working at any of Buyer's premises will comply with the security, confidentiality, safety and conduct policies, including all on site regulations specified by Buyer for personnel working at Buyer's sites or accessing Buyer's IT systems at such premises, as are notified by or on behalf of Buyer to Supplier in writing from time to time and shall conduct themselves in a professional manner.

17. No Transfer

- 17.1 The parties do not consider that the commencement, performance, termination or expiry of the Contract(s) or of the provision of the Works pursuant to, or contemplated by, the Contract(s) will operate to transfer the employment of any employee or other person whether under TUPE, any TUPE Equivalent Legislation or otherwise ("**TUPE Event**").
- 17.2 Supplier shall indemnify and keep indemnified each member of Buyer's Group and any Future Service Provider against all and any costs, expenses, liabilities, damages, and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against any member

of Buyer's Group or any Future Service Provider by virtue of the operation of TUPE or any TUPE Equivalent Legislation where there is TUPE Event.

18. Bribery Act and Corruption

- 18.1 Supplier shall at all times comply with all Anti-Bribery and Corruption Laws and shall not, and shall ensure that it and its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of Supplier in connection with any Contract shall not, engage in any activity, practice or conduct which would constitute an offence or causes or could cause it or any member of its Group or Buyer or any member of Buyer's Group to breach or commit an offence under any Anti-Bribery and Corruption Laws.
- 18.2 Supplier shall at all times comply, and shall ensure that its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of Supplier in connection with any Contract comply, with Buyer's anti-bribery and anti-corruption policies in force from time to time and available on the Buyer's website [INSERT WEBLINK]
- 18.3 Supplier shall devise, implement and enforce written policies and procedures constituting adequate procedures under the Anti-Bribery and Corruption Laws in order to prevent commission of any offence under any Anti-Bribery and Corruption Laws and/or any breach of the Buyer's anti-bribery and anti-corruption policies by the Supplier, its staff and any third party agents, contractors and/or associated persons to the Supplier. The Supplier shall, on Buyer's request, provide Buyer with copies of such written policies and procedures.
- 18.4 The Supplier shall devise, implement and enforce written policies and procedures constituting prevention procedures under the Criminal Finances Act 2017 (or as may be required by any other equivalent applicable law) in order to prevent the facilitation of tax evasion and/or commission of any offence under the Criminal Finances Act 2017 (or any other equivalent and applicable law) by the Supplier, its staff and any third party agents, contractors and/or associated persons. The Supplier shall, on Buyer's request, provide the Buyer with copies of such written policies and procedures.
- 18.5 Supplier shall ensure that any person associated with the Supplier who is performing Services or providing Goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Supplier under this Clause 18. Supplier is responsible for the observance and performance by such persons of those terms and shall be directly liable to the Buyer for any breach by such persons of such terms.
- 18.6 Supplier shall promptly report to Buyer any request or demand for any improper financial or other advantage of any kind received by Supplier, or which Supplier gives or intends to give, in each case whether directly or indirectly, in connection with the performance of any Contract.
- 18.7 The Supplier shall promptly report in writing to the Buyer if it becomes aware that or has reasonable grounds to believe that it or any persons associated with it may have committed an offence under the Criminal Finances Act 2017 (or any other equivalent applicable law). Supplier shall also notify the Buyer in writing if it has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal

Finances Act 2017 (or any other equivalent applicable law), in connection with the performance of this Agreement.

- 18.8 Supplier will promptly give Buyer written notice of any breach of this Clause 18.
- 18.9 Breach of this Clause 18 shall be deemed a material breach of all Contracts which is not capable of remedy and Buyer may exercise its rights to terminate the relevant Contracts under Clause 13.1.
- 18.10 Within 30 days of the date of signature of this Agreement, and annually thereafter, certify to the Buyer in writing signed by an officer of the Supplier, compliance with this Clause 18 by the Supplier and all persons associated with it in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Buyer may reasonably request from time to time.
- 18.11 Supplier shall indemnify each member of Buyer's Group from and against any against any and all losses, liability, damages, claims, demands, actions, costs, (including costs incurred in preventing, avoiding or mitigating loss), charges, interest, payment actions, proceedings, penalties, fines, adverse judgments, orders or other sanctions, expenses or liabilities (including lost opportunity costs, additional administrative and management time, loss of anticipated savings and costs and expenses of the Buyer's Group and legal expenses calculated on a solicitor and client basis) suffered, incurred or arising as a result of any breach by Supplier of this Clause 18 or by any subcontractor of any equivalent provisions contained in the relevant subcontract.

19. Anti-Slavery

- 19.1 Supplier shall at all times:
- 19.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force, including the Modern Slavery Act 2015 ("**Anti-Slavery Laws**");
- 19.1.2 comply with the relevant parts of Buyer's supplier code of conduct relating to modern slavery and human trafficking and will procure that its officers, employees, subcontractors, agents and any other persons who perform services for or on behalf of it in connection with the Works will comply with the same;
- 19.1.3 have and maintain its own policies and procedures to ensure compliance with Anti-Slavery Laws ("**Anti-Slavery Policy**"), will comply with the Anti-Slavery Policy and will procure that its officers, employees, subcontractors, agents and any other persons who perform services for or on behalf of it in connection with the Works will comply with the same; and
- 19.1.4 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK ("**Modern Slavery Practice**").
- 19.2 Supplier will:
- 19.2.1 conduct proper and adequate checks on any agency or person used by Supplier to provide labour or contractors (whether temporary or permanent) or undertake tasks for Supplier to ensure that any such agency or person does not engage and has not in the past engaged in any Modern Slavery Practice;
- 19.2.2 provide Buyer with such assistance and

information as Buyer may require from time to time to enable Buyer to:

- (a) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as required by Buyer;
- (b) prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act and to include the matters referred to in section 54(5) of that Act;
- (c) identify any non-compliance with the Anti-Slavery Policy or Buyer's supplier code of conduct relating to modern slavery and human trafficking;
- (d) conduct due diligence on its own suppliers, sub-contractors and other participants in its supply chain to ensure that its supply chains do not involve any slavery or human trafficking and measure the effectiveness of steps Supplier is taking or wishes to take to ensure that Modern Slavery Practices are not taking place in its business or supply chains; and

19.2.3 permit Buyer, and any of its nominated representatives, to have such access on demand to Supplier's premises, personnel, systems, books and records as Buyer may require to verify compliance.

- 19.3 Supplier will immediately give written notice to Buyer upon the occurrence of a breach or suspected breach of any of its obligations referred to in this Clause 19 or any human trafficking in a supply chain which has a connection with any Contract.
- 19.4 Any breach of this Clause 19 by Supplier will be a material breach of any and all Contracts which is not capable of remedy and in respect of which Buyer may terminate in accordance with Clause 13.1.
- 19.5 Buyer will be entitled, by giving written notice to that effect to Supplier, to require Supplier to take such action as Buyer requires to ensure Supplier fully complies with Anti-Slavery Laws and the Anti-Slavery Policy.

20. Brexit Has No Effect and Change In Applicable Law

- 20.1 The UK's withdrawal from the EU ("**Brexit**"), any change or occurrence arising out of or in connection with Brexit (including any increased costs, overheads or expenses of the Supplier or any decrease in Supplier's profitability in respect of any Contract which arises directly or indirectly in connection with such) or any movement in exchange rates relating to UK pounds sterling will not:
 - 20.1.1 subject always to Clause 20.2, affect any obligation under any Contract; or
 - 20.1.2 subject always to Clause 20.2, have the effect of altering any term of any Contract (including the charges) or of discharging or excusing performance under any Contract and the parties acknowledge and agree that Brexit shall not be give rise to any event of termination or frustrate the continuance of any Contract or this Agreement.
- 20.2 If there is a Change In Applicable Law (as a result of Brexit or otherwise), the Supplier shall ensure that the Works continue to be provided in compliance with all applicable laws including making any changes necessary to its procedures and policies in order to ensure continued compliance

with such.

- 20.3 The Supplier shall:
 - 20.3.1 bear the costs of implementing any Change In Applicable Law; and
 - 20.3.2 not be entitled to claim for any additional expenses incurred or claim any other relief if there is a Change In Applicable Law.

21. Traceability

- 21.1 Supplier shall have and operate a process to ensure that the origin of all Works, sub-assemblies and the components contained therein supplied to Buyer are fully Traceable to the original manufacturer.
- 21.2 Supplier shall, unless directed otherwise by Buyer in writing, procure components from the manufacturer of the components, or through franchised distributors or direct component suppliers.
- 21.3 Supplier agrees to indemnify and hold Buyer harmless from and against all costs and expenses for the removal, repair or replacement of counterfeit components incorporated into the Works sold by Supplier to Buyer including where the counterfeit component was procured by Supplier in accordance with Clause 21.2 or from another entity pre-approved by Buyer in writing.
- 21.4 Supplier will:
 - 21.4.1 require that its suppliers provide a Certificate of Conformance with each component shipment;
 - 21.4.2 perform incoming inspections of components and paperwork to ensure conformity to Specification; and
 - 21.4.3 maintain and document incoming inspection specifications used for each component used in manufacturing the Works, but these obligations shall not apply to components consigned or sold to Supplier from Buyer.
- 21.5 If components are not purchased in accordance with Clause 21.2 or are purchased without full Traceability and manufacturers' certificates, Supplier will ensure that prior written approval has been obtained from Buyer before using such components and that the approving permit number shall be cross referenced on Supplier's release certification. To obtain Buyer's approval Supplier may have to, at Buyer's sole option and at Suppliers cost, perform the following:
 - 21.5.1 check with the manufacturer that the date and batch codes identified on the Certificate of Conformity are genuine; and
 - 21.5.2 complete or arrange for actual component testing on a representative sample of the components to verify their conformance to specification.
- 21.6 For components purchased from Buyer, Supplier shall maintain the traceability back to the paperwork provided by Buyer as part of the components transfer.

22. NRE and Tooling

- 22.1 Any Tools or Tooling purchased from Supplier or manufactured by Supplier, the cost of which forms part of an Order will become the property of Buyer and all right, title and interest in and to any part of Tooling will pass to Buyer as soon as it is acquired or fabricated in accordance with the Order.
- 22.2 Supplier shall state the number of parts capable of being produced by the Tooling. Supplier will be responsible for the calibration, maintenance, repair and replacement of all Tooling where damage is caused to the Tooling by the acts or omissions of Supplier. Supplier shall transfer to Buyer any third

party transferable warranties on Tooling.

22.3 Supplier shall be responsible for the routine maintenance, storage, repair, usage, replacement (within their useful life, fair wear and tear excepted) and calibration of all Tooling and Buyer acquired NRE Items in Supplier's possession for performance of any Contract. If calibration or other specialist requirements are required outside of routine maintenance, repair or usage and not caused by a lack of care or damage by Supplier, Buyer shall have an option at any time, which shall be exercised by written notice to Supplier, to pay not more than the balance of the outstanding NRE Item cost for its outright ownership. In this event, Supplier shall subtract the amortisation amount from the Base Price and establish a new Base Price for subsequent deliveries.

23. Buyer's Property

23.1 Any Buyer's Property remains the exclusive property of Buyer but will be at Supplier's risk while in the Supplier's possession and/or control. Supplier will insure, maintain and keep Buyer's Property in good condition (subject to fair wear and tear) at all times when in Supplier's possession or control. The Supplier shall on demand indemnify Buyer from and against all Liability incurred by Buyer or its Group and their respective directors, officers, agents, employees, successors and assigns arising out of or in connection with loss or damage to the Buyer's Property while it is in the Supplier's possession and/or control.

23.2 The Buyer may demand possession of such Buyer's Property at any time without notice, but if this affects Supplier's cost of performing any Contract on which the Buyer's Property is or was to be used, or affects Supplier's ability to meet any delivery dates under such Contract, then Supplier is entitled to a reasonable price adjustment or reasonable Delivery schedule adjustment or both to the extent necessary to mitigate the effect of such on the Supplier and provided always that Supplier will provide Buyer with reasonable evidence (on Buyer's request) of the impact on Supplier.

23.3 Supplier shall maintain and keep Buyer's Property in good repair condition and calibration and Buyer will compensate Supplier at its normal hourly rates for all calibration, maintenance or repair services to Buyer's Property (excluding Tools, Tooling and NRE Items and any normal preventative maintenance services or services to correct defects caused by Supplier's act or omissions), provided that Buyer approves such services and rates in advance and in writing.

23.4 Supplier shall keep Buyer's Property, Tools and Tooling separate and apart from its own property and that of other persons and shall clearly mark them as being Buyer's property.

23.5 Supplier warrants that Buyer's Property, Tools, Tooling and NRE Items shall not be used by Supplier for any purpose other than for the supply of the Works to Buyer.

23.6 Supplier will compile and submit reports on the status of Buyer's Property, Tools, Tooling and NRE Items as reasonably requested by Buyer including details on any repairs and maintenance necessary to maintain supply of the Works to specification.

23.7 Supplier shall be liable to Buyer for any loss of or damage to Buyer's Property, Tools, Tooling and NRE Items during the time it is in Supplier's possession, custody or control. During such time Supplier shall insure Buyer's Property, Tools and Tooling at full replacement value in the name of and for the benefit

of Buyer at Supplier's expense with a reputable insurance provider.

23.8 Supplier waives any lien which it might otherwise have at any time on any of Buyer's Property.

23.9 Supplier shall promptly pay Buyer on demand the full replacement value of any of Buyer's Property, Tools, Tooling and NRE Items which is not provided to Buyer in good condition or satisfactorily accounted for.

24. Delivery

24.1 When delivering Works that contains software to Buyer, Supplier shall deliver all of the following:

24.1.1 any password and encryption details necessary to access the software or its source code; and

24.1.2 full details of the software, including full name and version details, design information including module names and functionality, the type of media on which the software is provided, details of any commands required to install and make a backup copy of the software, any compression used in packaging the software, and details of operating systems on which the software runs.

24.2 The delivery of Works shall be in accordance with the Special Conditions.

25. Open source software

25.1 Supplier shall give Buyer at least thirty days' written notice if it proposes to incorporate the Works in or use the Works in combination with any open-source software, whereupon Buyer may require that Supplier, as soon as practicable and in good faith:

25.1.1 provides and discusses with Buyer all reasonable additional information concerning the open-source software including (except for conditions of confidentiality) the type, proposed use and licence terms;

25.1.2 discusses with Buyer any negative potential effects upon the Intellectual Property Rights or the exploitation of Buyer's products; and

25.1.3 takes such action as may be reasonably instructed by Buyer to minimise any such negative effects or to remove and replace the open-source software.

25.2 Irrespective of the above, Supplier shall not use open-source software for any reason whatsoever unless Buyer has consented in writing to its use.

26. Data Protection

26.1 As at the date of this Agreement, the parties do not expect they will require the other to process any Personal Data relating to each others users or any end users under or in connection with this Agreement. If, the position set out in this Clause 26.1 changes, the parties agree that they shall negotiate in good faith to agree appropriate data protection arrangements and contractual provisions as between them as necessary in order to ensure that both parties are and remain compliant with Data Protection Laws.

26.2 Notwithstanding the foregoing, each party shall comply with all applicable Data Protection Laws in respect of the processing of Personal Data in connection with this Agreement. Each party shall use reasonable endeavours to assist the other party to comply with its obligations in respect of any applicable Data Protection Laws in respect of any Personal Data received in connection with this Agreement, including in respect of provisions of any

privacy notices.

27. Delay

27.1 Except for in any failure to meet any milestone (if applicable) by the applicable milestone date, which shall be governed in accordance with any applicable Special Conditions, if the Supplier fails to perform the Works (including the delivery of any Goods) by the dates specified in the Order for performance or the Works are otherwise not in accordance with this Agreement, the Buyer may deduct (as liquidated damages) from the charges the amount specified in the relevant Order for each day or part day of delay provided that the Supplier shall have no liability for any failure or delay in performing the Works to the extent that such failure or delay is caused by Buyer's failure to comply with its obligations under the relevant Contract. The parties acknowledge that any liquidated damages due in accordance with any Contract are proportionate to protect the operational and financial interests of Buyer in the event of delay or non-performance and that the amount specified is reasonable.

28. Change Control Procedure

28.1 This Clause 28 shall apply where there is no alternative change control procedure set out in the applicable Special Conditions.

28.2 Either party may submit a written request for Change to the other party in accordance with this Change Control Procedure, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.

28.3 Buyer and the Supplier shall discuss Changes proposed by either party and such discussions shall result in:

- 28.3.1 an agreement not to proceed further; or
- 28.3.2 a written request for a Change by Buyer; or
- 28.3.3 a recommendation for a Change by the Supplier.

28.4 Where a written request for a Change is received from the Buyer, the Supplier shall, unless otherwise agreed, submit a Change Control Note to Buyer within 10 Business Days.

28.5 A recommendation for a Change by the Supplier shall be submitted as a Change Control Note directly to Buyer at the time of such recommendation.

28.6 Each Change Control Note shall contain, as a minimum:

- 28.6.1 the reason for the Change;
- 28.6.2 full details of the Change, including any specifications and any increase or decrease to the charges as a result of the Change (each, a "**Charges Adjustment**"); and
- 28.6.3 the impact, if any, of the Change on other aspects of any Contract.

28.7 For each Change Control Note submitted, the parties shall, within 10 Business Days of the date of the Change Control Note, evaluate the Change Control Note and, as appropriate, either:

- 28.7.1 request further information or request a variation to the Change Control Note; or
- 28.7.2 agree to the Change under the Change Control Note and arrange for signature of such; or
- 28.7.3 notify the other party of the rejection of the Change Control Note (except for that the Supplier may only reject the Change Control Note in accordance with Clause 28.10).

28.8 The Supplier agrees that any Charges Adjustment

proposed by it shall be reasonable, taking appropriate account of:

28.8.1 The rate card or pricing schedule agreed pursuant to the RFP;

28.8.2 the nature and scope of the Change;

28.8.3 the costs actually incurred by the Supplier in relation to the implementation and/or ongoing operation of the Change;

28.8.4 where applicable, the impact of the Change on the Supplier's costs relating to the Work; and

28.8.5 where applicable, the impact of the Change on the risk profile of the Contractor under the relevant Contract(s) or the Agreement.

28.9 Any Charges Adjustment shall be subject to the Supplier:

28.9.1 taking reasonable steps to minimise any increase in its costs arising from the Change, including by ensuring that, where possible:

28.9.2 existing resources are used in relation to the implementation and/or ongoing operation of the Change; and

28.9.3 any existing or new resources used in relation to the Change are used in a reasonably efficient manner and in accordance with Good Industry Practice;

28.9.4 taking reasonable steps to mitigate any risks or other adverse effects of the Change (and, where applicable, to take advantage of any positive or beneficial effects of the Change); and

28.9.5 providing reasonable evidence upon Buyer's request to verify its compliance with Clause 28.8 and this Clause 28.9.

28.10 The Supplier can reject a Change proposed by the Buyer by notifying the Buyer accordingly but only if the Supplier (acting reasonably) believes (and can demonstrate to the Buyer, acting reasonably) that the proposed Change:

28.10.1 would materially and adversely affect the risks to the health and safety of any person;

28.10.2 would result in the Supplier being or requiring to act in any way which would be in breach of any law;

28.10.3 is not technically feasible (given the Supplier's expertise and the nature of the Works);

28.10.4 would require the provision of services that are not of a type generally provided by the Supplier and are not within the Supplier's expertise or capability; and/or

28.10.5 would result in the Supplier being in breach of any Contract, provided that the Supplier has notified the Buyer accordingly, and the parties (acting reasonably and in good faith) are unable to agree on an appropriate amendment to this Agreement or the relevant Contract(s) to resolve such issue.

28.11 Once fully agreed between both parties, the Supplier shall arrange for a copy of an approved Change Control Note to be signed for and on behalf of each party by each party's duly authorised representative.

28.12 A Change Control Note signed by Buyer and the Supplier shall constitute an amendment to the relevant Contract(s) and this Agreement (as applicable).

29. Step-in

29.1 In the event that any liquidated damages become due to the Buyer in accordance with any Contract and/or a right for the Buyer to exercise its rights

pursuant to this Clause 29.1 is triggered in accordance with Clause 10.4 the Buyer, without affecting any of its other rights or remedies under the Contract or any applicable law may:

29.1.1 obtain substitute Works from a third party supplier and the Supplier shall reimburse Buyer for the costs it incurs in doing so; or

29.1.2 appoint a reasonable number of its own or third party personnel to oversee and/or assist the Supplier in its performance of the relevant Contract and/or any other Contract and to review:

a) the circumstances that have given rise to the non-conformance by the Supplier with the terms of the relevant Contract; and/or

b) the performance (or non-performance) by or on behalf of the Supplier of any obligations under the relevant Contract,

in order to try to mitigate, remedy or prevent the reoccurrence of the circumstances that have given rise to the Supplier's non-conformance with the relevant Contract.

29.2 The Supplier shall be responsible for and shall reimburse the Buyer for any and all costs incurred by or on behalf of the Buyer under or in connection with the exercise of any of its rights pursuant to this Clause 29.

29.3 The Supplier shall provide the Buyer with all access, assistance and information reasonably required by the Buyer in order for it to effectively exercise its rights in accordance with its Clause or as otherwise reasonably required by the Buyer to enable it to try to mitigate, remedy or prevent the reoccurrence of the circumstances that have given rise to the Supplier's non-conformance with the relevant Contract.

30. Withholding tax

30.1 If any payment to be made under any Contract is subject by law to any withholding tax, the payer shall make payment to the payee of the amount owing, less a deduction for such withholding tax and shall account to the relevant Tax Authority for the withholding tax provided always that the payer has possession, as furnished by the payee, of declaration(s) of tax residence on the prescribed forms and certification of the UK (or other as relevant) Tax Authority which are current and accurate in order to confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty, the amount of withholding tax deducted will be calculated by the payer in accordance with any appropriate double taxation convention and/or treaty between the states in which the payer and the payee respectively reside. The payee shall furnish declaration(s) of tax residence on the prescribed forms and obtain certification of the UK (or other as relevant) Tax Authority in order that the payer may confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty as envisaged above. Payment of such net sum to the payee and to the relevant Tax Authority of the said withholding tax shall, for the purposes of the relevant Contract, constitute full settlement of the sums owing under the relevant invoice.

SECTION B Definitions

In these Conditions:

"Anti-Bribery and Corruption Laws" means any and all applicable laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, any judgment order or decision of any court, regulator or tribunal and sanctions which relate to anti-bribery, financial crime, fraud and/or anti-corruption, including the United Kingdom Bribery Act 2010, the Criminal Finances Act 2017, the United States Foreign Corrupt Practices Act 1977 (15 U.S.C. Section 78dd-1, et. seq.), as amended, updated, replaced or superseded from time to time.

"Anti-Slavery Laws" has the meaning given to it in Clause 19.1.1 of Section A.

"Anti-Slavery Policy" has the meaning given to it in Clause 19.1.3 of Section A.

"Base Price" means a specific list of prices (or if not agreed the initial prices) established and agreed by the parties in writing for the supply of the Works.

"Brexite" has the meaning given to it in Clause 20.1 of Section A.

"Bribery Act" means Bribery Act 2010 in the United Kingdom.

"Business Days" any day except a Saturday, Sunday or public/bank holidays on which the banks in London are open for business.

"Buyer" means the subsidiary of AVIC Cabin Systems Ltd which places an order with Supplier for Works.

"Buyer Data" means the data supplied or otherwise made available by or on behalf of any member of the Buyer's Group to Supplier's Group or any of Supplier's sub-contractors and the data generated by or stored in the computer systems and telecommunications networks owned or operated by or on behalf of or for the benefit of Buyer to which Supplier or its sub-contractors gain access in connection with the provision of any Works together with any Modifications thereto from time to time made by or on behalf of any person.

"Buyer's Property" means any dies, tools, patterns, plates, artwork, designs, drawings, specifications, free issue materials, software, data, information, property, equipment or other documents or items in the possession or under the control of Supplier which have been supplied or made available by or on behalf of the Buyer to Supplier (and any associated Intellectual Property Rights).

"Change" means an amendment to:

- (a) the scope, nature, volume or execution of the Works under any Contract; or
- (b) any other term of any Contract or this Agreement.

"Change In Applicable Law" means the coming into effect into England and/or Wales and/or Scotland, after the date of this Agreement of:

- (a) any applicable law (other than legislation published prior to the date of the Agreement in a draft bill as part of a governmental departmental paper, in a bill, in a draft statutory instrument or as a proposal in the official journal of the European Communities) or the repeal, amendment or variation to applicable laws; or

- (b) any applicable judgment of a relevant court of law which changes a binding precedent.

"Change of Control" means for any entity, any change in the:

- (a) ownership or control (directly or indirectly) of more than 25% of the voting capital of the entity; or
- (b) ability (directly or indirectly) to direct the casting of more than 25% of the votes exercisable at general meetings of the entity; or
- (c) right (directly or indirectly) to appoint or remove directors of the entity holding a majority of voting rights at meetings of the board of directors of the entity.

"Change Control Note" means the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

"Change Control Procedure" means the procedure set out at Clause 28 of Section A or otherwise in the Special Conditions (where applicable) for agreeing a Change.

"Charges Adjustment" has the meaning given to it at Clause 28.6 of Section A.

"Confidential Information" means all information which would reasonably be considered to be of a confidential nature in respect of the business of a party including, without prejudice to the generality of the foregoing, any technical or commercial know-how, ideas, business methods, prices, business, financial information, marketing, development or manpower plans, customer lists and/or details trade secrets, specifications, inventions, designs, software, market opportunities, products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by Buyer and information concerning Buyer's relationships with actual or potential clients, customers or suppliers and the needs and requirements of Buyer and of such persons and any other information which, if disclosed, will be liable to cause harm to a party.

"Contract" has the meaning given to it in Clause 1.2 of Section A.

"Data Protection Laws" any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a party is subject including the GDPR and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy.

"Developments" means any Works, development documentation, information, materials, plans, drawings, reports or the like created under, in connection with or for the purposes of a Contract.

"Direct Competitor" means any third party in the defence, aerospace, intelligence or surveillance market selling products in competition with Buyer or any member of its Group.

"Dispute" means any dispute, claim, difference or controversy arising out of or in connection with a Contract, including any dispute as to its existence, validity, interpretation, performance, breach or termination and any dispute relating to any tortious or non-contractual obligations

arising out of or in connection with it.

"Draft Order" has the meaning given to it in Clause 2.1 of Section A.

"Export/Import Laws" has the meaning given to it in Clause 5.1 of Section A.

"Future Service Provider" means any third party provider of the Works who replaces Supplier.

"GDPR" means the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

"Good Industry Practice" means all relevant practices and professional standards that would be expected of a well-managed, expert service provider performing services or supply of goods (as appropriate) which are substantially similar to the Works to customers of the same nature as the Buyer.

"Group" means in relation to a company, that company, any subsidiary, affiliate or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

"Holding company" and **"subsidiary"** are as defined in section 1159 of the Companies Act 2006.

"Intellectual Property Rights" means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in all countries in the world and together with all renewals and extensions.

"Liability" means any liability whether in contract (including negligent breach of contract), tort (including negligence), breach of statutory duty, restitution, under any indemnity or otherwise in respect of any loss or damage howsoever caused.

"Modern Slavery Practice" has the meaning given to it in Clause 19.1.4 of Section A.

"Modification" means all translations, adaptations, arrangements, derivative works, developments, enhancements, error corrections, fixes, versions, upgrades, updates, new releases and, without limitation, by reference to the foregoing, modifications (and "Modified" shall be construed accordingly).

"NCR" has the meaning given to it at Clause 7.9 of Section A.

"Non-Recurring Expense Items" or **"NRE Items"** means any unique labour, tooling, jigs, fixtures, stencils, or other items utilized for the manufacture of Works that are separately priced in an Order for the Works, amortised in the Base Price of the Works or detailed in a separate NRE Items Order related to the Works.

"Order" means any Draft Order which is accepted by the Seller in accordance with Clause 2.1 of Section A.

"Personal Data" means any personal data (as defined in Data Protection Laws).

"Relevant Charges" has the meaning given to it in Clause 15.7 of Section A.

"RFP" means request for proposals issued by the Buyer and responded to by the Supplier for the supply of Works.

"Special Conditions" means any special conditions of Buyer attached to or forming part of an Order, including those set out at section C.

"Specification" means in relation to Goods the technical requirements of the Goods provided by the Buyer to Supplier, whether in the Order or any other document or in relation to Services the Buyer's documents detailing the requirements of the Services.

"Supplier" means the corporate entity to which Buyer issues an order for Works.

"Tax Authority" means any taxing or other authority competent to impose any liability in respect of taxation or responsible for the administration and/or collection of taxation or enforcement of any law in relation to taxation.

"Testing" has the meaning given to it in Clause 8.1 of Section A.

"Tools" or "Tooling" means tools for use with or created pursuant to the Works.

"Traceable" means accompanied with original authentic certificates of conformity from the manufacturer of the original component or if not accompanying the component delivered to the Buyer, are in the possession of Supplier as specified by the Buyer's specification and **"Traceability"** shall be construed accordingly.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) (UK S/I number: 2006/246).

"TUPE Equivalent Legislation" means any legislation in any jurisdiction which is equivalent to or similar to TUPE and/or the Acquired Rights Directive (Council Directive 2001/23/EC) insofar as it relates to the transfer of employees.

"TUPE Event" has the meaning given to it in Clause 17.1 of Section A.

"Virus" means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes, but is not limited to, self-propagating programming instructions commonly called viruses, trojans or worms.

"Works" mean the goods and/or services as specified in any Order or any part thereof.

In these Conditions and any Special Conditions:

- 1.1 Clause headings are for convenience only and do not affect or form part of the meaning or the construction or interpretation of the Conditions and any Special Conditions;
- 1.2 the words **"other"**, **"includes"**, **"including"** and **"in particular"** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to

the same class as the preceding words where a wider construction is possible; and

- 1.3 references to a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision as amended, applied, consolidated or re-enacted or replaced whether before or after the date of this Agreement; and
- 1.4 references to the singular include the plural (and vice versa), references to one gender include all genders and words denoting persons include individuals, bodies corporate, partnerships, unincorporated associations and other bodies.