



## MOD Terms and Conditions for Less Complex Requirements

### ITT №: 715719467 (PPA/014) – Strip, Survey and Overhaul of Rotary Variable Diff Transformers

#### 1 Definitions - In the Contract:

**Act** means the Procurement Act 2023;

**Article** means, in relation to Clause 9 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;

**The Authority** means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

**Business Day** means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

**Connected Person** in relation to a Contractor or Relevant Subcontractor, means any of the following:

- (1) a person with "significant control" over the Contractor or Relevant Subcontractor (within the meaning given by section 790C(2) of the Companies Act 2006 ("CA 2006"));
- (2) a director or shadow director of the Contractor or Relevant Subcontractor;
- (3) a parent undertaking or a subsidiary undertaking of the Contractor or Relevant Subcontractor;
- (4) a predecessor company;
- (5) any other person who it can reasonably be considered stands in an equivalent position in relation to the Contractor or Relevant Subcontractor as a person within paragraph (1) to (4);
- (6) any person with the right to exercise, or who actually exercises, significant influence or control over the Contractor or Relevant Subcontractor;
- (7) any person over which the Contractor or Relevant Subcontractor has the right to exercise, or actually exercises, significant influence or control;

**Contract** means the agreement concluded between the Authority and the Contractor, including all terms and conditions, associated purchase order, specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with clause 2.c;

**Contractor** means the person, firm or company specified as such in the purchase order. 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;

**Contractor Deliverables** means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule to the purchase order;

**Debarment List** means the list of debarred suppliers kept by a Minister of the Crown pursuant to section 62 of the Act;

**Effective Date of Contract** means the date stated on the purchase order or, if there is no such date stated, the date upon which both Parties have signed the purchase order;

**Firm Price** means a price excluding Value Added Tax (VAT) which is not subject to variation;

**Government Furnished Assets (GFA)** 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;

**Hazardous Contractor Deliverable** 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;

**Issued Property** 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;

**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.

**Mixture** means a mixture or solution composed of two or more substances;

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

**Parties** means the Contractor and the Authority, and Party shall be construed accordingly;

**PPT** means a tax called "plastic packaging tax" charged in accordance with Part 2 of the Finance Act 2021;

**PPT Legislation** means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

**Plastic Packaging Component(s)** shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;

**Relevant Subcontractor** means a Subcontractor about which information was sought by the Authority during the procurement of the Contract on whether:

- (1) the Contractor intended to Subcontract the performance of all or any part of the Contract;
- (2) any intended Subcontractor was on the Debarment List;

**Sensitive Information** means the information listed as such in the purchase order, being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

**Subcontractor** means any Subcontractor engaged by the Contractor or by any other Subcontractor of the Contractor at any level of subcontracting to provide any goods, works or services required by the Contractor to provide the whole or any part of the Contractor Deliverables under this Contract and 'Subcontract' shall be interpreted accordingly;

**Substance** means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

**Transparency Information** means the content of the Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any information which is exempt from disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations Act 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.

## 2 General

- a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in the Contract or not.
- b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.
- c. If there is any inconsistency between these terms and conditions and the purchase order or the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority: (1) the terms and conditions; (2) the purchase order; and (3) the documents expressly referred to in the purchase order.
- d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights or remedies. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 16 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

## 3 Application of Conditions

- a. The purchase order, these terms and conditions and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.
- b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

## 4 Disclosure of Information

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1).

## 5 Transparency

- a. Notwithstanding any other condition of the Contract, and in particular Clause 4, the Contractor agrees that the Authority may publish the Transparency Information to the general public.
- b. The Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- c. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information. Where the Authority publishes Transparency Information, it shall redact any Sensitive Information and, where reasonably practicable, consult with the Contractor on the proposed redactions prior to publication.
- d. The Authority shall present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed.
- e. The parties agree that they will not disclose information in relation to the Contract in contravention of their obligations under data protection legislation. In this clause, "data protection legislation" has the same meaning as in the Data Protection Act 2018.

## 6 Notices

- a. A Notice served under the Contract shall be:
  - (1) in writing in the English language;
  - (2) authenticated by signature or such other method as may be agreed between the Parties;
  - (3) sent for the attention of the other Party's representative, and to the address set out in the purchase order;
  - (4) marked with the number of the Contract; and
  - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the purchase order, by electronic mail.
- b. Notices shall be deemed to have been received:
  - (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day 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.

## 7 Intellectual Property

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

### Notification of Intellectual Property Rights (IPR) Restrictions

- d. Where any of the Conditions listed below (1 to 3) have been added to these Conditions of the Contract as Project Specific DEFCONs at Clause 21, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 2 (Notification of Intellectual Property Rights (IPR) Restrictions):
  - (1) DEFCON 15 - including notification of any self-standing background Intellectual Property;
  - (2) DEFCON 90 - including copyright material supplied under clause 5;
  - (3) DEFCON 91 - limitations of Deliverable Software under clause 3b;
- e. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 2.
- f. Any amendment to Schedule 2 shall be made in accordance with DEFCON 503 (SC1).

## 8 Supply of Contractor Deliverables and Quality Assurance

- a. This Contract comes into effect on the Effective Date of Contract.
- b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Schedule to the purchase order.
  - c. The Contractor shall ensure that the Contractor Deliverables:
    - (1) correspond with the specification;
    - (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
    - (3) comply with any applicable Quality Assurance Requirements specified in the purchase order.
- d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

## 9 Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables

- a. Nothing in this Clause 9 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. As soon as possible and in any event within the period specified in the purchase order (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority's representatives in the manner and format prescribed in the purchase order:
  - (1) confirmation as to whether to the best of its knowledge any of the Contractor Deliverables contain Hazardous Substances, Mixtures or Articles; and
  - (2) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
  - (3) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
  - (4) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and / or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1 % w/w of the Article, sufficient information, available to the supplier, to allow safe use of the Article including, as a minimum, the name of that Substance at the time of supply.
- c. For substances, Mixtures or Articles that meet the criteria list in clause 9.b above:
  - (1) 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/safety Information and forward it to the Authority and to the address listed in the purchase order; and
  - (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

- e. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details on DEFFORM 68 of:
  - (1) activity; and
  - (2) the substance and form (including any isotope).
- f. If the Substances, Mixtures and Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details on DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- g. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substance, Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under Condition 18 (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 18.
- h. 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.

#### **10 Delivery / Collection**

- a. The purchase order 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. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with clause 10.a.
- c. The Authority shall be deemed to have accepted the Contractor Deliverables within a reasonable time after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

#### **11. Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in the purchase order or 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 shown in the Contract.
- 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 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

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

- a. The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the purchase order and Def Stan 81-041 (Part 1 and Part 6).
- b. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 12. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Schedule to the purchase order:
  - (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
  - (2) the International Maritime Dangerous Goods (IMDG) Code;
  - (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
  - (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).
- c. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

#### **13 Plastic Packaging Tax**

- a. The Contractor shall ensure that any PPT due in relation to the Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with DEFCON 609 (SC1) the Contractor (and their Subcontractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
  - (1) confirmation of the tax status of any Plastic Packaging Component;
  - (2) documents to confirm that PPT has been properly accounted for;
  - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
  - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.

- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 13.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their Subcontractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

#### 14. Progress Monitoring, Meetings and Reports

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the purchase order and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings. Any additional meetings reasonably required shall be at no cost to the Authority.

#### 15 Payment

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 15.b 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 15.a, the Authority will consider and verify that invoice without undue delay.
- c. The Authority shall pay the Contractor any sums due to be paid under the invoice before the end of the period of 30 days beginning with the day on which a **valid and undisputed** invoice is received by the **Authority** in respect of the sum or, if later, the day on which the payment falls due in accordance with the invoice.
- d. Where the Authority fails to comply with clause 15.b 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 15.c 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 their rights and remedies under the 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.

#### 16 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 16.a the dispute shall be referred to arbitration and 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 it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

#### 17 Termination for Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

- a. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):
  - (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - (2) commits or has committed any prohibited act or 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;
  - (3) has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- b. In exercising its rights or remedies to terminate the Contract under clause 17.a. the Authority shall:
  - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
  - (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to): (a) requiring the Contractor to procure the termination of a Subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
  - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.
- c. Where the Contract has been terminated under clause 17.a. the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

#### 18 Material Breach

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 their obligations under the Contract. Where

the Authority has terminated the Contract under Clause 18 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.

## 19 Insolvency

The Authority shall have the right to terminate the Contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under the Contract.

## 20 Limitation of Contractor's Liability

a. Subject to clause 20.b the Contractor's liability to the Authority in connection with the Contract shall be limited to £5m (five million pounds). b. Nothing in the Contract shall operate to limit or exclude the Contractor's liability:

(1) for:

- a. any liquidated damages (to the extent expressly provided for under the Contract);
  - b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or underperform its obligations under the Contract, including service credits or other deductions (to the extent expressly provided for under the Contract);
  - c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under the Contract;
  - d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;
- (2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the Contract;
- (3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or Subcontractors;
- (4) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
- (5) in relation to the termination of the Contract on the basis of abandonment by the Contractor;
- (6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
- (7) for any other liability which cannot be limited or excluded under general (including statute and common) law.

c. The rights of the Authority under the Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

## 21 Debarment List

- a. The Contractor shall immediately notify the Authority in writing if after the award of the Contract the Contractor, any Connected Person, or any Relevant Subcontractor is, or is likely to be, added to the Debarment List.
- b. On receipt of a written notification under clause 21.a, the Authority may request in writing from the Contractor information in respect of the Contractor (including information relating to any Connected Person where relevant) as it may reasonably require and in reasonable timescales as determined solely by the Authority.
- c. In addition to any other rights and remedies within the Contract, the Authority shall have the right to terminate the Contract where:
  - (1) the Contractor or a Connected Person of the Contractor has, since the award of the Contract been added to the Debarment List; and/or
  - (2) any Relevant Subcontractor or a Connected Person of the Relevant Subcontractor has, since the award of the Contract, been added to the Debarment List.
- d. Where the Authority intends to terminate pursuant to clause 21.c.(2) the Authority shall permit the Contractor, within a reasonable timescale (such timescale to be determined solely by the Authority), to either: (1) replace the Relevant Subcontractor; or (2) terminate their Subcontract with the Relevant Subcontractor.
- e. Where the Contractor, a Connected Person of the Contractor, a Relevant Subcontractor or a Connected Person of the Relevant Subcontractor has been added to the Debarment List, this will constitute a material breach of the Contract and termination shall be in accordance with Clause 18.
- f. The Contractor shall not Subcontract (and shall procure that none of their Subcontractors shall Subcontract) any part of the Contract to a supplier whose name appears on the Debarment List, without the prior written consent of the Authority. If the Contractor or any of their Subcontractors enter into a Subcontract with a supplier whose name appears on the Debarment List, without prior approval, this shall constitute a material breach of the Contract.

## 22 The project specific DEFCONs and DEFCON SC variants that apply to the Contract are:

DEFCON 113	(Edn 02/17)	Diversion Orders
DEFCON 117 (SC1)	(Edn 09/24)	Supply of Documentation for NATO Codification Purposes
DEFCON 129J (SC1)	(Edn 06/17)	The Use of Electronic Business Delivery Form
DEFCON 503 (SC1)	(Edn 06/22)	Formal Amendments to the Contract
DEFCON 524A (SC1)	(Edn 12/22)	Counterfeit Material
DEFCON 528 (SC1)	(Edn 10/24)	Import and Export Licences
DEFCON 531 (SC1)	(Edn 09/21)	Disclosure of Information
DEFCON 532A	(Edn 05/22)	Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
DEFCON 534	(Edn 02/25)	Subcontracting and Prompt Payment
DEFCON 537	(Edn 12/21)	Rights of Third Parties
DEFCON 538	(Edn 06/02)	Severability
DEFCON 566	(Edn 04/24)	Change of Control of Contractor
DEFCON 601 (SC)	(Edn 03/15)	Redundant Material
DEFCON 620 (SC1)	(Edn 06/22)	Contract Change Control Procedure
DEFCON 621B	(Edn 10/04)	Transport (If the Contractor is Responsible for Transport)
DEFCON 627 (SC1)	(Edn 02/24)	Quality Assurance – Requirement for a Certificate of Conformity
DEFCON 637	(Edn 05/17)	Defect Investigation And Liability

**23 The special conditions that apply to the Contract are:**Russian and Belarusian Exclusion

- a. The Contractor shall, and shall procure that their Sub-contractors shall, notify the Authority in writing as soon as they become aware that:
  - i. the Contractor Deliverables and/or Services contain any Russian/Belarusian products and/or services; or
  - ii. the Contractor or any part of the Contractor's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:
    - (1) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and / or
    - (2) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.
- b. The Contractor shall, and shall procure that their Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contract Deliverables and/or Services.
- c. The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and/or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 business days of receipt of the Authority's written concerns, for the Authority's consideration.
- d. The Contractor shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.

**24 The processes that apply to the Contract are:**Additional Strip and Survey, and Repair requirements

- a. The 'Turnaround Time' for each Strip and Survey PO(s) will commence when the Contractor has received both the 'Strip and Survey' PO and the relevant Article(s). The 'Turnaround Time' will end on delivery of the Strip and Survey Report to the Authority's TTLS Manager and Inventory Manager.
- b. 'Strip and Survey' of each Article(s) shall be undertaken as soon as possible by the Contractor (or its sub-contractors) following receipt of both the Article and the 'Strip and Survey' PO.
- c. As a minimum the activities below shall be performed on each Article(s) by the Contractor (or its subcontractors) before the 'Strip and Survey' requirements can be considered to be complete:
- d. Initial visual assessment to determine the Article(s) overall condition on arrival/receipt.
  - i. Initial functional checks to substantiate if the Article(s) has No Fault Found (NFF) or is considered pre-repair 'Beyond Economical Repair' (BER) or has intermittent/partial/full fault condition.
  - ii. Conduct detailed visual inspection of internal/external components for any sign(s) of corrosion, wear, bulging, cracking, partial discharge, bent or worn components, scorching or any other indication of degradation.
  - iii. For Articles with removable microprocessors, programmable logic units, hard drives, fans and discrete circuit cards these sub-components are to undergo functional tests to substantiate their working /fault state.
  - iii. For Articles with electronic or electrical sub-components, then these are to be continuity tested, insulation impedance tested and electronic functionally tested to substantiate their working /fault state.
- e. After conducting 'Strip and Survey' activities the Article is declared:
  - i 'No Fault Found' (NFF) – The Articles(s) has been validated as having no fault or that simple repair and testing activities are sufficient to return the Article(s) to 'serviceable not new' status.  
The Contractor is to note that only the agreed 'strip and survey' price shall be payable in such cases.
  - ii Repairable (REP) - The article can be repaired to 'serviceable not new' status.
  - iii 'Beyond Economical Repair' (BER) – The repair cost will exceed 75% of the cost of the article if purchased 'As new'

- f. A costed Strip and Survey Report shall be produced by the Contractor and forwarded to the Authority's TTLS Manager, within the agreed 'Turnaround Time'. The Report shall state whether a 'No Fault Found', 'Repairable' or 'Beyond Economic Repair' recommendation is considered appropriate, together with a FIRM priced quotation for the Overhaul. The Strip and Survey report shall also include but not be limited to the following information:

- i. Full Description of all Articles, including NSN's, Part Number's and Serial Numbers.
- ii. Packaging defects;
- iii. Completeness of article;
- iv. A list of component parts with associated part costs that need to be replaced / repaired;
- v. Minor concessions required.
- vi. The nature of the work to be undertaken;
- vii. Modification State
- viii. Reasoning for declaring Article NFF or pre-repair BER or repairable.
- ix. Firm price cost of repair.

- g. As a minimum your FIRM price(s) for Overhaul are to be broken down as follows:

Materials	Labour	Overhead	Profit	Total Firm Price (Ex VAT)

- h. Once the Strip and Survey report is acknowledged and approved by the Authority's TTLS Manager, one of the following shall be approved by the Authority:

- i. 'Strip and Survey Only' at the agreed S&S Price which will be the total price payable (Ex VAT)
- ii. 'Repair' at the agreed Repair price which shall be payable in addition to the S&S Price (Ex-VAT)



## **Schedule 1 – Additional Definitions of Contract**

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**Schedule 2 – Notification of Intellectual Property Rights (IPR) Restrictions (i.a.w. Clause 7) for Contract No. \_\_\_\_ PART A –**  
**Notification of IPR Restrictions**

1. <u>ITT / Contract Number</u>		714465452		
2. <u>ID #</u>	3. <u>Unique Technical Data</u> <u>Reference Number / Label</u>	4. <u>Unique Article(s)* Identification</u> <u>Number / Label</u>	5. <u>Statement Describing IPR Restriction</u>	6. <u>Ownership of the Intellectual</u> <u>Property Rights</u>
1				
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Please continue on additional sheets where necessary.

\* Article(s), for the purpose of this form only, means part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.

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**PART B – System / Product Breakdown Structure (PBS)**

The Contractor should insert their PBS here. For software, please provide a Modular Breakdown Structure.

(Please see the [DEFFORM 711 Completion Notes](#) for guidance on completing Schedule 2)

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