

STANDARD CONDITIONS OF PURCHASE**1. DEFINITIONS**

In this Order:

BAE Systems: means BAE Systems Australia Limited ABN 29 008 423 005 or the BAE Systems entity identified on the Order.

BAE Systems Group: means BAE Systems plc and any of its wholly-owned subsidiaries from time to time within the meaning of Section 1159 of the UK Companies Act 2006.

Conditions: mean these BAE Systems Standard Conditions of Purchase.

Confidential Information: means any and all confidential information, including without limitation any and all technical, financial, commercial or other information or trade secrets, (howsoever recorded, preserved or disclosed) disclosed by the Disclosing Party to the Receiving Party and either identified by a suitable legend or other marking as being confidential (or similar designation) in a prominent position or described as being confidential at the time of disclosure or which would reasonably be considered to be confidential having regard to all the circumstances of the disclosure; any information obtained by examination, testing or analysis in any way from such confidential information; and any derivative of any such confidential information provided that Confidential Information shall not include any information which the Receiving Party can show through documentary evidence:

(a) is or becomes publicly available otherwise than as a result of a breach of the Order or the fault of the Receiving Party;

(b) has been lawfully received from a third party without restriction as to its use or disclosure;

(c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party;

(d) was independently developed by or for the Receiving Party without making use of any Confidential Information; or

(e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party,

and, for the avoidance of doubt and without prejudice to the generality of the above, Confidential Information shall not be deemed to be publicly available merely because it may be derived from one or more items that are publicly available.

Controlled Material: means any of the Supplies which, are regulated by the ITAR, the EAR, the UK Export Control Order 2008, the EU Dual-Use Regulation, the Australian Customs Act 1901 or any other laws or regulations of any jurisdiction relating to import or export controls.

Counterfeit Supplies: means (i) Supplies which have been identified, marked and/or altered by a source other than the Suppliers' legally authorised source and which have been misrepresented to be an authorised item of the legally authorised source and/or (ii) previously used Supplies provided as new.

Declaration Form: means the Export Control Jurisdiction & Classification Declaration Form or any other form approved by BAE Systems Group General Counsel for the collection of jurisdiction and/or classification information from suppliers.

Disclosing Party: means a party which discloses any Confidential Information to the Receiving Party.

EAR: means US Department of Commerce's Export Administration Regulations. The EAR controls the export, re-export & transfer (in-country) of certain civil, dual use, and military items listed on the Commerce Control List or subject to the EAR.

EAR Technology: means specific information necessary for the "development", "production", or "use" of a product. The information takes the form of "technical data" or "technical assistance". Controlled "technology" is defined in the General Technology Note (Supplement No. 2 to Part 774) and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR). "Technology" also is specific information necessary for any of the following: operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, or other terms specified in Export Control Classification Numbers (ECCNs) on the Commerce Control List that control "technology".

Indemnified Party: means BAE Systems and any member of the BAE Systems Group.

ITAR: means the United States Law (Section 39, Arms Export Control Act, 22 USC 2779) as implemented by the US Department of State in the *International Traffic in Arms Regulations*. The ITAR controls the export, re-export & retransfer of defense articles and defense services enumerated on the US Munitions List (USML) (ITAR Part 121) or specially designed parts, components, accessories, attachments or associated equipment and systems

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specially designed for items enumerated on the USML.

ITAR Defense Articles: means any item or technical data designated in the ITAR United States Munitions List (USML). This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly related to items designated in the USML. It does not include basic marketing information on function or purpose or general system descriptions.

ITAR Technical Data: means information, other than software as defined in ITAR § 120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. Classified information relating to defense articles and defense services; Information covered by an invention secrecy order; Software as defined in § 121.8(f) of the ITAR directly related to defense articles. This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11 of the ITAR. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

Modern Slavery: means any activity, practice or conduct that would constitute or in any way be consistent with slavery, forced labour, involuntary servitude, debt bondage, human trafficking, or other slavery-like exploitation, and which is prohibited or defined as a modern slavery offence under any applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force, including but not limited to the Criminal Code Act 1995 (Cth), the Modern Slavery Act 2018 (NSW), the Modern Slavery Act 2018 (Cth), and the Modern Slavery Act 2015 (UK). For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

Order: means the purchase order sent by BAE Systems to the Supplier via email, facsimile or mail and any listed attachments which together make up the contract between BAE Systems and the Supplier.

Personal Information: means information or an opinion about an identified or reasonably identifiable individual and the contact details or tax file number of

any person, in all cases where obtained by or on behalf of a party or any of its employees, agents, officers or contractors in connection with this Order.

Receiving Party: means a party which receives any Confidential Information from the Disclosing Party.

SHE: means BAE Systems' safety, health and environmental policies relevant to the Site.

Site: means a Site or a facility which is owned, leased or occupied by BAE Systems.

Supplier: means the person or company on whom the Order is placed.

Supplies: means all goods and services detailed on the Order.

2. APPLICATION OF CONTRACT

- a. These Conditions shall apply to the Order except where modified by Supplementary Conditions otherwise incorporated in the Order, which shall have precedence over these Conditions.
- b. These Conditions and any Supplementary Conditions referred to in clause 2(a), shall be the entire agreement between BAE Systems and the Supplier and shall supersede all previous communications or representations between BAE Systems and the Supplier, including any standard Conditions of Sale issued by the Supplier. These Conditions shall not be varied unless agreed in writing by BAE Systems.
- c. If written notice of acceptance of the Order has not been received by BAE Systems within twenty-eight (28) days from the date of the Order, BAE Systems reserves the right to cancel this Order without incurring any liability to the Supplier, unless performance has commenced by the Supplier in the meantime.
- d. Any qualification of these Conditions which may appear in the Supplier's notice of acceptance shall constitute a counter-offer by the Supplier which shall have no effect unless accepted in writing by BAE Systems.
- e. BAE Systems' Order number and Order line number, where applicable, must be quoted on all documents and correspondence relating to the Order.

3. CHANGES

- a. BAE Systems may direct a change to the Order with respect to the delivery date, the shipping or packing instructions, or the place of delivery and the Supplier shall comply with BAE Systems' written instructions without delay.

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- b. Within fourteen (14) days after notification of any changes in accordance with clause 3(a), the Supplier shall submit an Order Change Proposal to BAE Systems which shall detail the effect of such change on the delivery schedule or the price. BAE Systems and the Supplier shall agree any reasonable adjustment to the delivery schedule or the price and incorporate such agreement into the Order by written amendment.
- c. BAE Systems may also amend the Order with respect to any of the following:
 - i. the quantity of the Supplies;
 - ii. the quality of the Supplies; or
 - iii. any specification or drawings,
- d. provided that an Order amendment pursuant to clause 3(c) shall not take effect until BAE Systems and the Supplier have agreed any reasonable adjustment to be made to the delivery schedule or the price stated in the Order, and incorporated such agreement into the Order by written amendment.

4. SUPPLIER'S RESPONSIBILITIES**General**

- a. The Supplier shall provide the Supplies to BAE Systems in accordance with the Order.
- b. The Supplier shall obtain, maintain and observe all necessary regulatory approvals required for the provision of the Supplies.
- c. The Supplier shall comply with all legislation, standards and regulations, including those relating to health, safety and environment, which are relevant to the Supplies.

On Site Responsibilities

- d. Prior to commencing provision of the Supplies at a Site, the Supplier, and Supplier's employees, agents and sub-contractors who are required on Site, shall complete all inductions required by BAE Systems in relation to SHE and Site obligations.
- e. The Supplier shall, in providing any Supplies, ensure that it, and its employees, agents and sub-contractors, are provided with and comply with BAE Systems' policies, procedures, practices and reasonable directions given by BAE Systems including the requirement to wear protective clothing and use safety equipment.
- f. The Supplier shall ensure that it, all employees, agents and sub-contractors are aware of and comply with any security requirements applicable to the Site.

- g. The Supplier shall ensure that it, all of its employees, agents and sub-contractors are aware of and comply with the obligations of this clause 4.

5. DELIVERY, RISK AND TITLE

- a. The Supplies shall be delivered to the place(s) named in the Order no later than the dates specified in the Order. Partial deliveries shall not be made unless agreed in writing by BAE Systems.
- b. The Supplies shall be packed to a good commercial trade pack standard suitable for the designated mode of transport and capable of long term storage without damage or degradation to the Supplies.
- c. The Supplier shall provide a Safety Data Sheet for all hazardous chemicals (as defined in the Work Health and Safety Regulations 2011) that are part of the Supplies.
- d. Title and risk to the Supplies shall pass to BAE Systems on delivery unless otherwise specified in the Order, but without prejudice to any right of rejection which may accrue to BAE Systems hereunder.
- e. If any of the Supplies are not delivered by the date(s) specified in the Order, BAE Systems shall be entitled:
 - i. to return to the Supplier at the Supplier's risk and expense any of the Supplies already delivered but which cannot be effectively and commercially used, and to recover from the Supplier any moneys paid by BAE Systems for such Supplies; and
 - ii. to recover from the Supplier any additional expenditure reasonably incurred by BAE Systems in obtaining other equivalent Supplies in replacement.

6. CONFORMITY WITH ORDER

- a. The Supplier warrants that the Supplies shall conform to the quantity, quality (including quality assurance requirements) and specification stated in the Order, and shall be free from defect in design (except where BAE Systems is the design agent), materials and workmanship.
- b. The Supplier shall not substitute any Supplies or component parts of the Supplies, without prior written approval by BAE Systems.
- c. Where BAE Systems acceptance tests are defined in the Order, acceptance of the Supplies shall take place after satisfactory completion of the acceptance tests. If BAE Systems unreasonably and without notification to the Supplier fails to commence the tests within one (1) month of the date of actual

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delivery, the Supplies will be deemed to have been accepted at the end of the (1) month period from the date of actual delivery.

- d. Where no acceptance tests are defined in the Order, acceptance of the Supplies shall take place either after completion of inspection by BAE Systems or at the end of one (1) month from the date of actual delivery, whichever is the earlier.
- e. If the Supplies do not conform to the quantity, quality (including quality assurance requirements) or specification stated in the Order, or do not meet the required standards of design, material or workmanship, then BAE Systems shall be entitled, without prejudice to any other remedy, to exercise one or more of the following rights:
 - i. to reject all or any of the Supplies and require the Supplier to credit BAE Systems with the price of the Supplies;
 - ii. to require the Supplier to promptly replace or repair the Supplies free of all cost and at the Supplier's risk; or
 - iii. to require the Supplier to indemnify all BAE Systems' reasonable expenses and additional costs connected with such defect.
- f. The provisions of this clause 6 shall apply in addition to, and without prejudice to, any other of BAE Systems' rights hereunder or at law, whether express or implied.
- g. The warranty rights under this clause shall be assignable to BAE Systems, or for the benefit of its customer or the ultimate end-user of the Supplies, for a period of at least twelve (12) months from the actual date of delivery or from the Order date of delivery (whichever is later).

7. ACCESS

BAE Systems' representatives and those of its customer shall have access to the Supplier's works or place of business at all reasonable times for any purpose in connection with the performance by the Supplier of the Order. The Supplier shall secure the same rights of access to the premises of its subcontractors.

8. CONFIDENTIALITY

- a. The Supplier shall:
 - i. not use the information in the Order except for the purpose of supplying the Supplies to BAE Systems;
 - ii. not grant third parties access to Order information without the prior written consent of BAE Systems, and only use such information for the purpose for which the consent is granted;
 - iii. require any third party to whom Order information is provided to sign an undertaking in the same terms as the Supplier's undertaking.
- b. The Supplier shall not use BAE Systems' name or any of the Order information for publicity purposes without BAE Systems' prior written consent.
- c. The Supplier must comply with all reasonable directions of BAE Systems in respect of information with a Defence security classification.

9. ITEMS ON LOAN

All tools, patterns, materials, drawings, specifications, data or equipment loaned by BAE Systems to the Supplier, or obtained by the Supplier at a cost to BAE Systems for the purposes of the Order, shall remain BAE Systems property. The Supplier shall on completion of the Order or as otherwise directed surrender the same to BAE Systems in good and serviceable condition (fair wear and tear excepted).

10. PRICE AND PAYMENT

- a. Prices shall be non-variable and inclusive of all taxes (other than GST), duties, packaging and delivery of the Supplies to the destination or freight-forwarder stated in the Order.
- b. In the event that a variable price has been agreed, no later than 6 months after submission of an invoice the Supplier shall submit a separate claim for payment of any amount calculated in respect of the price variation. The Supplier shall have no entitlement whatsoever in respect of claims made outside that period.
- c. BAE Systems requires invoices to be provided in the approved GST format and requires any applicable Australian GST to be separately identified on the invoice. Invoices not in the required format will not be processed by BAE Systems. All prices shall be on a GST exclusive basis.
- d. The Supplier shall submit an invoice in respect of the Supplies properly provided to BAE Systems to the

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Accounts Payable Department by email to au.aphelpdesk@baesystems.com, on or after the delivery of the Supplies.

- e. Each correctly submitted and valid invoice shall become due for payment at the end of the month following the month of the invoice, unless otherwise nominated on the Order, provided that:
 - i. the Supplies have been delivered by the Supplier; and
 - ii. the Supplies have been accepted by BAE Systems, in accordance with clauses 5 and 6 respectively.
- f. All invoices raised must detail the Order number, line number and match the Order specifically with regard to the price, quantity and unit of measure. Invoices must be submitted in the same currency as the Order. All non-compliant invoices will be rejected.

11. DOCUMENTATION

Advice notes and certificates of conformity shall be submitted by the Supplier in duplicate, the original to accompany the Supplies and a copy to be sent by post to the BAE Systems stores supervisor at the address stated in the Order.

12. INTELLECTUAL PROPERTY

- a. The Supplier indemnifies BAE Systems against any claim or action made or instituted against BAE Systems relating to any loss, injury or damage caused by or any infringement of copyright, registered and unregistered trademarks, registered designs, trade secrets, know-how, rights in relation to any circuit lay-out, data, invention, work or patent perpetrated by the Supplier in connection with the Supplies.
- b. Where the design of the Supplies is furnished by BAE Systems any copyright or design rights in any work produced by the Supplier in the course of providing the Supplies pursuant to this Order shall be and remain the property of BAE Systems. Otherwise any intellectual property rights in the Supplies shall remain vested in the Supplier.
- c. The Supplier grants BAE Systems a non-exclusive, royalty-free licence to use any intellectual property contained or referred to in any of the Supplies that it provides to BAE Systems pursuant to this Order.
- d. In the event that the Supplier is unable to or unwilling to continue to complete the Order, and the Order is terminated, the Supplier shall deliver to BAE Systems all necessary drawings, designs and manufacturing information to enable BAE Systems to

make the Supplies or have them made elsewhere, and shall grant BAE Systems a royalty free license for that purpose.

13. WAIVER

Failure on the part of BAE Systems in exercising any right it may have under the Order shall not be deemed a waiver of that right.

14. INDEMNITIES

- a. The Supplier shall indemnify BAE Systems against all liability, damages, costs, loss, expense and damage of any nature whatsoever arising from the Supplier's negligence, breach of duty, breach of statute or otherwise, which is caused by or arises from:
 - i. the performance by the Supplier of the Order;
 - ii. the design, manufacture, sale, use or possession of the Supplies;
 - iii. any infringement, breach or misuse of any patent, copyright, trademark, registered design or other industrial or intellectual property; or
 - iv. any failure to conform to or comply with the requirements of the Order.

15. INSURANCE

The Supplier agrees to maintain insurance cover with a reputable insurer for the following classes of risk in respect of work to be carried out under the Order:

- a. public and product liability insurance should be in the following relevant minimum sums (unless otherwise agreed in writing with BAE Systems):
 - i. AUD\$5m for Orders up to AUD\$20m;
 - ii. AUD\$10m for all other Orders;
- b. employers liability; and
- c. such other classes as are appropriate to the circumstances of the Order as specified by BAE Systems, including Professional Indemnity if required in the Order.

16. SUBCONTRACTS

- a. The Supplier shall not assign or purport to sub-contract, assign or transfer this Agreement or any of its rights or obligations whether in whole or in part to any other person without the prior written consent of BAE Systems. In the event that the Supplier proposes sub-contracting or otherwise engaging a third party to provide all or part of the Services in relation to shipping, transporting, handling or receiving goods which are controlled or restricted

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under the ITAR the Supplier shall advise BAE Systems of this intention and the identity of the third party prior to releasing such goods to it. In the event that BAE Systems advises the Supplier that the third party is unacceptable to it, the Supplier shall not engage that third party and in no event release the goods to the third party without BAE Systems prior approval. The Supplier shall indemnify BAE Systems against all claims, costs, liabilities, losses and expenses incurred by BAE Systems arising from a breach of this clause.

17. CONTINUITY OF SUPPLY

The Supplier agrees to accept further orders for similar Supplies at prices and delivery lead times no less favourable than those agreed in the Order, taking account of quantities, technical standards and economic conditions prevailing at the time of any further order. In the event that the Supplier is unwilling or unable to accept such orders he shall deliver to BAE Systems without charge all the necessary drawings, manufacturing information and tooling to enable BAE Systems to make the Supplies itself or have them made elsewhere.

18. TERMINATION AND SUSPENSION

- a. The Order may be terminated for convenience by BAE Systems at any time in whole or part by giving written notice of termination to the Supplier. In the event of such notice being given the Supplier shall stop work forthwith and shall comply with any directions with regard to the Supplies which may be given by BAE Systems.
- b. The Supplier shall submit within one (1) month from the effective date of termination the Supplier's termination claim. BAE Systems shall pay a fair and reasonable price to the Supplier in respect of any commitments, liabilities or expenditure reasonably and properly incurred by the Supplier in connection with the Order and which would otherwise represent an unavoidable loss to the Supplier. BAE Systems shall not be liable to pay any sum which, when taken together with any other sum or sums paid or due to the Supplier under the Order, shall exceed the total price of the Supplies the subject of the said notice of termination.
- c. In the event of any stoppage, delay or interruption of the Supplier's work or business as a result of strikes, lockouts, trade disputes, breakdown, accident or any cause whatsoever beyond the reasonable control of Supplier, then BAE Systems may suspend or postpone its obligations hereunder until the stoppage, delay or interruption has ceased.

- d. If the Supplier defaults on any of its obligation under the Order, BAE Systems shall have the right to terminate all or part of the Order by written notice without prejudice to any other of its rights or remedies, and shall be liable only for Supplies delivered and accepted by BAE Systems.
- e. If the Supplier becomes insolvent or has a receiver or administrator appointed in respect of its business or any of its assets or is compulsorily or voluntarily wound up, then BAE Systems shall have the right to terminate the Order by written notice without prejudice to any other right or remedies, and shall be liable only for Supplies delivered and accepted by BAE Systems.
- f. No termination or suspension of the Order shall prejudice any rights or obligations of either party hereunder or at law. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.

19. NOTIFICATION OF NON-CONFORMING PRODUCT

- a. If, at any time during the period from delivery of the Supplies through the life of type of the Supplies, the Supplier becomes aware of any defect in the Supplies which adversely affects, or is likely to adversely affect, the operation of the Supplies or the safety of personnel, the Supplier shall give notice of the defect to BAE Systems. Such notice shall be provided in writing in accordance with clause 19(c) below.
- b. Where the adverse effect or likely adverse effect is critical to the operation of the Supplies or the safety of personnel, the Supplier shall give notice to BAE Systems immediately on becoming aware of the defect and shall provide fully documented confirmation of the notice in accordance with clause 19(c) below.
- c. The Supplier shall provide notices within the period prescribed in relevant regulations and legislation applicable to this Order and in all other cases within 20 working days of the Supplier becoming aware of the defect.
- d. Notices are to be addressed to:

The Quality Manager
BAE Systems
PO Box 1068
Salisbury SA 5108

20. INDUCEMENT AND ETHICS

- a. Whether acting alone or with others, the Supplier undertakes that it will not do, and warrants that prior

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to accepting the Order it has not done, any of the following:

- i. induce an employee, agent or sub-contractor of BAE Systems to make any concession or to confer any benefit on the Supplier, refrain or withhold from doing any act or alter any of the requirements of the Order in return for any gift, money, benefit or other inducement; nor
 - ii. without the prior written consent of BAE Systems, pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Order; nor
 - iii. encourage or facilitate an employee, agent or sub-contractor of BAE Systems to commit any act of dishonesty against BAE Systems which may benefit the employee, agent or sub-contractor of BAE Systems or be a detriment to BAE Systems, or both.
- b. The BAE Systems Group maintains an ethics and compliance programme that includes a written code of conduct, training and awareness for all employees, details of which can be found at www.baesystems.com. The BAE Systems Group expects and encourages all its suppliers to embrace ethical values and legal compliance practices of a comparable standard (including a method for reporting possible violations). The Supplier undertakes that it will abide by and comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including the Criminal Code Act 1995 (Cth), UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977.
- c. Responsible behaviour is fundamental to how BAE Systems conducts business. Regular assessments of BAE Systems' supply base is a critical part of this commitment. BAE Systems' "best practice" expectations of all current and proposed suppliers are contained in "Supplier Principles – Guidance for Responsible Business", details of which can be found at <https://www.baesystems.com/en/our-company/corporate-responsibility/suppliers-and-supply-chain>.

21. PRIVACY LAW

Where a party obtains Personal Information in connection with its obligations under this Order, that party must handle the information in accordance with the Australian Privacy Principles (as amended or replaced from time to time) in the Privacy Act 1988 and only to perform its obligations under this Order.

Each party is responsible for ensuring that any person it authorises to access that Personal Information meets the requirements of this clause.

22. MODERN SLAVERY

- a. The Supplier represents, warrants and undertakes:
- i. that it does not engage in Modern Slavery;
 - ii. that no form of Modern Slavery is used in the Supplier's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
 - iii. to comply with all applicable employment and work health and safety laws;
 - iv. to comply with all applicable statutory requirements relating to Modern Slavery, including but not limited to compliance and reporting requirements under the Modern Slavery Act 2018 (NSW), the Modern Slavery Act 2015 (UK) and the Modern Slavery Act 2018 (Cth); and
 - v. to notify BAE Systems promptly upon becoming aware of any incident, complaint or allegation that the Supplier or any entity in its supply chain, has engaged in Modern Slavery.
- b. The Supplier shall have and maintain throughout the Term its own policies and procedures that are intended to ensure compliance with the warranties contained in clause 22(a) above.
- c. The Supplier acknowledges that BAE Systems may have corporate reporting requirements with regard to Modern Slavery and, at the request of BAE Systems, it will confirm in writing that it has complied with its undertakings under this clause 22 and will provide any information requested by BAE Systems in support of such compliance.

Upon becoming aware of any actual, suspected or anticipated breach of this clause 22, the Supplier must immediately provide written notice of the breach, giving full details of such breach, to BAE Systems.

23. OFFSET

- b. The Supplier understands that BAE Systems and other companies within the BAE Systems Group and associated companies of BAE Systems plc accrue significant offset obligations resulting from international sales. To assist in satisfying these obligations, BAE Systems may wish to take advantage of the Supplier's offshore supply chain

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and investment activity, in order that potential offset credits can be claimed in identified target markets.

- c. The Supplier acknowledges that companies within the BAE Systems Group and associated companies thereof may be entitled to utilise through BAE Systems the total value of the Order and any sub-contracts placed by the Supplier arising from the Order, as fulfilment in whole or in part of any offset obligation placed, or to be placed, upon a company in the BAE Systems Group or an associated company thereof by an overseas customer.
- d. The Supplier shall first seek and obtain BAE Systems' written permission prior to using the Order and/or any sub-contracts arising from the Order in satisfaction of the Supplier's own or any of the Supplier's other customers' offset obligations.
- e. On request by BAE Systems, the Supplier shall assist the relevant company in registering the Order with the appropriate bodies as a satisfactory offset.
- f. If the offset involves US defense articles or defense services, the Supplier and BAE Systems shall consult on the applicability of any ITAR brokering requirements and each, as may be appropriate given the nature of the offset transaction, shall seek any necessary authorisation in a timely manner.

24. COUNTERFEIT SUPPLIES

- a. The Supplier shall ensure that Counterfeit Supplies are not delivered to BAE Systems. In fulfilling its obligations under the Order, the Supplier shall only purchase products to be delivered or incorporated as Supplies to BAE Systems directly from the organisation that is the originating source for the production of legitimate components or equipment. Supplies shall not be acquired from distributors that are independent from the originating organisation's authorised distribution chain, without written consent from BAE Systems.
- b. The Supplier shall as soon as practicable notify BAE Systems if the Supplier becomes aware or suspects that it has acquired Counterfeit Supplies. When requested by BAE Systems, the Supplier shall provide documentation that authenticates traceability of the affected Supplies to organisation that is the originating source for the production of legitimate components or equipment.
- c. In the event that Supplies delivered under the Order constitute or include Counterfeit Supplies, the Supplier shall, at its expense promptly replace such Counterfeit Supplies with genuine Supplies conforming to the requirements of the Order.

Notwithstanding any other provision in the Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Supplies, including without limitation BAE Systems' costs of removing Counterfeit Supplies, of reinserting replacement Supplies and of any testing necessitated by the reinstallation of Supplies after Counterfeit Supplies have been exchanged.

25. APPLICABLE LAW

These Conditions shall be governed by the laws which are applicable to the State in which the Supplies are delivered as shown on the Order.

26. EXPORT CONTROL

- a. The Supplier represents and warrants that it will comply with all applicable import and export control laws and regulations (including, if applicable, the US export control laws and regulations referred to in clause 25(b)(i) below in fulfilling the Order and will provide all information about the Supplies, including where relevant information regarding constituent parts thereof, that may be necessary for BAE Systems' compliance with all applicable import and export control laws and regulations. The Supplier shall:
 - i. notify BAE Systems in writing at the time the Order is accepted, as well as when any changes occur or subsequent information is received by the Supplier to stipulate that the Supplies (or any part thereof) are subject to such controls;
 - ii. in addition to the notification at clause 25(b)(i) above, when requested by BAE Systems, provide documentation, in the form of a signed Declaration Form, certifying the jurisdiction and classification of Controlled Material. BAE Systems will provide the Supplier with a Declaration Form for completion which the Supplier will return to BAE Systems within 30 calendar days of the date of issue of the Order and in any event in advance of receipt by BAE Systems of such Controlled Material included in the Order. The Supplier is required to provide, amongst other things, the following types of information in the Declaration Form: (a) a description of the Controlled Material; (b) the name and address of the US exporter and/or manufacturer of all ITAR/EAR Controlled Material; (c) the part reference number for the Controlled Material; and (d) the ITAR US Munitions List category and paragraph number (and any special designation as Significant Military Equipment or Major Defense Equipment); the EAR Commerce Control List Export Control Classification Number (ECCN) (or other EAR designation); or the Military or Dual-Use List

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- Classification Number and identification under UK, EU and Australian regulations; and
- iii. obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to BAE Systems in accordance with the delivery dates required under the Order.
- b. If any of the Controlled Material, including any constituent part thereof, to be provided by or through the Supplier under the Order are controlled under the ITAR or EAR, (unless such are classified by the US exporter/manufacturer as EAR99 in which case the Supplier shall notify BAE Systems of this status in writing), the Supplier shall:
 - i. comply with all applicable US export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751 et seq., the ITAR, 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the EAR, 15 C.F.R. 730-774;
 - ii. immediately after the Order is accepted, consult with BAE Systems about the relevant authorisations required from the US Authorities and request from BAE Systems information necessary to make the Supplier's authorisation request complete and accurate, including, without limitation, full details of end use, end user(s), foreign consignees, intermediate consignees, sub-licensees and any other requirements such as information on dual or third country national employees, contract employees, location, or pre-existing company organisation authorisations which may be applicable;
 - iii. obtain all required US export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to BAE Systems in accordance with the delivery dates required under the Order;
 - iv. provide the following further information and documentation in writing at the time the Order is accepted, if already secured or, if not, as soon as possible upon being secured: (a) details of the relevant licence, agreement or other authorisation (including details of any exemptions or exceptions) such details to include the reference numbers and dates, authorised parties and end use as specified in clause 25(b)(ii) above, and any limitations/provisos; or (b) full copies of such licences, agreements or other authorisations including any correspondence with the US Department of State or the US Department of Commerce consenting to or giving guidance on the use of exemptions or exceptions or listing limitations/provisos, including transmittal letters.
 - c. Copies of the licences, agreements or other authorisations or detailed summaries of these authorisations as required under clauses 25(a)(iii) and 25(b)(iv) must be provided to BAE Systems no later than thirty (30) days prior to the first agreed scheduled delivery date. Any commercially sensitive information contained within licences or agreements may be deleted providing it does not prevent identification of the scope of the authorisation, including any relevant constraint; any provisos and conditions; the end users or the parties and/or consignees.
 - d. ITAR Delivery. Unless the applicable regulations (i.e. 22 C.F.R. 123.9) have been revised to require otherwise, for each ITAR Defense Article being delivered by the Supplier, the following information contained in clauses 25(d)(i) to 25(d)(iii), respectively shall be included as an integral part of the commercial invoice, and, in the case of ITAR Technical Data, on the document itself:
 - i. in respect of ITAR Defense Articles, information which identifies (i) the country of ultimate destination; the end user, (iii) the license or other approval number or exemption citation; and (iv) the following Destination Control Statement: "These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorised by U.S. law and regulations.
 - ii. When also exporting or re-exporting **items subject to the EAR** pursuant to a Department of State license or other authorisation or approval, the Supplier must also provide BAE Systems with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.

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- iii. in respect of ITAR Technical Data, this data should be marked as follows: “EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and retransfer is governed by the U.S. International Traffic in Arms Regulations (ITAR) and “This item is controlled by the U.S. Government and authorised for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. It may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorised ultimate consignee or end-user(s), either in its original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.” In addition, this marking legend should be supplemented with the following information, either on the document itself, or on an accompanying coversheet or document: “This information is authorized to the (i) country of ultimate destination: [●]; (ii) end user(s): [●]; (iii) pursuant to license or other approval number or exemption citation: [●].”
- e. EAR Delivery. Unless the applicable regulations (i.e. 15 C.F.R. 758.6) have been revised to require otherwise, for each item of EAR Controlled Material being delivered by the Supplier, the following Destination Control Statement shall be included as an integral part of the commercial invoice that accompanies the shipment, in the case of EAR Technology on the EAR Technology itself:
- i. In respect of EAR Items: “These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.” In addition, the Supplier must also provide the licence number(s) or license exception utilised and the ECCN for all 9x515 or 600 series items being exported, re-exported or transferred (in-country).
- ii. In respect of EAR Technology: “EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and transfer (in-country) is governed by the U.S. Export Administration Regulations (EAR) and ‘This item is controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. It may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in its original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.’” In addition, this marking legend should be supplemented with the following information, either on the document itself, or on an accompanying coversheet or document: “This information is authorized to the (i) country of ultimate destination: [●]; (ii) end user(s): [●]; (iii) pursuant to license or other approval number or license exception citation: [●].”
- f. Any outer package containing the Controlled Material should be marked/labelled with an Export Control statement as described in clauses 25(d) and 25(e) above as appropriate to the nature, size, packaging, etc. of the item.
- g. Where practical, the Supplier shall segregate deliveries of ITAR or EAR Controlled Material from other deliveries, and shall not mix ITAR Controlled Material with EAR Controlled Material on the same licences, agreements or authorisations unless permitted by US laws and regulations pursuant to Export Control Reform.
- h. Without limiting the foregoing, the Supplier shall only use Controlled Material in accordance with the licensed authorisation. The Supplier shall only use ITAR Technical Data or EAR Technology received from BAE Systems in the performance of the work required to deliver the Order, and shall not transfer or otherwise provide access to any ITAR or EAR Controlled Material, to include transfer to any individual, company or organisation (including lower-tier sub-contractors), without the authority of a US Government export licence, agreement, or other authorisation, such as an applicable licence exemption or exception. The Supplier will strictly comply with the conditions in any such approval and in the export licence or other Government authorisation for such disclosure. The restrictions on the transfer of export controlled data apply equally to

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- both data furnished by BAE Systems and to any such data incorporated in documents, software or hardware generated by the Supplier. Any rights in the data may not be acquired by the Supplier unless expressly authorised pursuant to an export licence, export agreement or otherwise provided in the ITAR or EAR. Additionally, no disclosure of data furnished by BAE Systems can be made unless and until BAE Systems has considered the request and provided its written approval through contractually authorised channels. Technical Data exported from the United States may not be transferred to another person except pursuant to specific provisions in the regulations (such as ITAR 22 C.F.R 126.18), as specifically authorised in a license or agreement (e.g. pursuant to a non-disclosure agreement (NDA) in the case of sub-licensees), or where prior written approval of the Department of State has been obtained.
- i. The Supplier hereby authorises BAE Systems to disclose any and all Confidential Information to government authorities with jurisdiction over such Confidential Information as may be reasonably necessary for the purpose of disclosing, resolving or remediating any violation or potential violation of applicable export control laws or regulations, as provided in clause 8(a)(ii).
 - j. The Supplier shall immediately notify BAE Systems if the Supplier is or becomes identified either individually or collectively on any list of denied, debarred, embargoed, blocked, prohibited, specially designated, sanctioned or otherwise ineligible parties maintained by any government or international organisation or, becomes ineligible to contract with the US Government, or if the Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
 - k. If engaged in the business of either exporting or manufacturing (whether exporting or not) US defence articles or defence services (as defined in the ITAR 22 C.F.R 120.6 and 120.9 respectively), the Supplier represents and warrants that it maintains an effective export/import compliance program in accordance with the ITAR and, if located in the US, that it is registered with the US Department of State as required by the ITAR.
 - l. If engaged in brokering activities within the meaning of the ITAR (22 C.F.R. 129), the Supplier represents and warrants that it is registered with the US Department of State as required by the ITAR and has obtained any necessary approval with respect to the Supplies provided in the Order.
 - m. If US defense articles or defense services subject to the ITAR form a part of the Order, the Supplier recognises and accepts that the Supplier and BAE Systems have disclosure requirements when making applications for the export, re-export or re-transfer of US defense articles or defense services valued in an amount of US\$500,000 or more, which are being sold commercially or as a result of a contract with the US Department of Defense to or for the use of the armed forces of a non-U.S. country or international organisation, and for which disclosure requirements relate to the payment of any political contribution, fee or commission, directly or indirectly, whether in cash or in kind, to or at the direction of any person in order to solicit, promote or otherwise to secure the Order or any related orders. In this context, when requested to do so by BAE Systems, the Supplier shall make a written certification to BAE Systems in a timely manner and not later than 20 days after receipt of such request regarding:
 - i. whether in relation to the Order or any related orders the Supplier or its vendors (as defined in 22 C.F.R. 130.8) have made, or offered or agreed to make: (i) any political contribution, including any loan, gift, donation or other payment of US\$1,000 or more to or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; or (ii) any fee or commission, including any loan, gift, donation or other payment of US\$1,000 or more; and
 - ii. if so, the Supplier shall identify, as provided in 22 C.F.R. 130.12: (i) the amount of each Political Contribution paid, or offered or agreed to be paid, or the amount of each Fee or Commission paid, or offered or agreed to be paid; (ii) whether each reported payment was in cash or in kind; (iii) the date or dates on which each reported amount was paid, or offered or agreed to be paid; (iv) the recipient of each such amount paid, or intended recipient if not yet paid, including name, nationality, address and principal place of business, employer and title, and relationship, if any, to the Supplier and to any purchaser or end-user; and (v) the person who paid, or offered or agreed to pay such amount; and

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- iii. the Supplier shall notify BAE Systems immediately if the circumstances described in clauses 25(m)(i) or 25(m)(ii) change, and shall respond promptly to any written inquiry made by BAE Systems seeking to confirm or update the Supplier's certification as provided in this clause 25(m).
- n. Where the Supplier is a signatory, sub-licensee or consignee under an export licence, agreement or other authorisation, the Supplier shall provide immediate written notification to BAE Systems in the event of changed circumstances affecting the said licence or agreement.
- o. AT BAE Systems' direction, the Supplier shall return or Systems destroy all of the ITAR Technical Data and/or EAR Technology or other Controlled Material exported to the Supplier pursuant to the Order upon fulfilment of its terms, send written confirmation of the destruction to BAE Systems within five (5) working days of the destruction and create and maintain the records required under the ITAR and EAR.
- p. The Supplier shall indemnify each Indemnified Party Systems against any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever incurred by each Indemnified Party as a result of or in connection with any breach by the Supplier, its employees, agents or sub-contractors of this clause 25.