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**BAE SYSTEMS**

**BAE SYSTEMS SAUDI ARABIA**

# **STANDARD CONDITIONS OF PURCHASE**

**BAESSA/SCP Issue 7**

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1. DEFINITIONS & INTERPRETATION

1.1 The definitions and rules of interpretation in this Clause 1.1 apply to the Order.

<p><b>“Anti-Corruption Law”</b></p>	<p>1.1 the Organisation for Economic Co-operation and Development Convention on Anti-Bribery;</p> <p>1.2 the United States of America Foreign Corrupt Practices Act 1977 (FCPA);</p> <p>1.3 the following United Kingdom laws:</p> <p>(a) the Bribery Act 2010;</p> <p>(b) the Proceeds of Crime Act 2002; and</p> <p>(c) any law or laws of England and Wales in force from time to time which are equivalent or additional to the above;</p> <p>1.4 any law of the Kingdom of Saudi Arabia; and which prohibits the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or adviser of such person; and</p> <p>1.5 any law of the Kingdom of Saudi Arabia which is broadly equivalent to the FCPA and/or the above United Kingdom laws or was intended to enact the provisions of the OECD Convention or which has as its objective the prevention of corruption or the conferring of any gift, payment or other benefit on any person;</p> <p>In each case such law to be interpreted as if it applies to the relevant person, regardless of whether it applies to such person as a matter of law .</p>
<p><b>“Conflicted Person”</b></p>	<p>(i) any officer of, employee of , or person acting in an official capacity for, any government body, state, public body or political party; or (ii) any legal person owned or controlled by any government body, state, public body or political party.</p>
<p><b>“Customer”</b></p>	<p>any customer of the Purchaser.</p>
<p><b>“EAR”</b></p>	<p>US Department of Commerce Export Administration Regulations .</p>
<p><b>"Event of Default"</b></p>	<p>an event specified as such in Clause 17.3.</p>
<p><b>Export License</b></p>	<p>any export license, agreement and/or other written form of approval required from the relevant governmental authority pursuant to the Export Regulations</p>
<p><b>“Export Materiel”</b></p>	<p>any and all defense article(s), defense service(s), technical data and/or any other subject matter of the US Munitions List or equivalent categorisation system which is or may be controlled under the Export Regulations (as defined in Clause 6) as amended from time to time (whether before, on or after the date of the Order) and which are relevant to and/or connected with the Supplier’s obligations in respect of the subject matter of the Order.</p>
<p><b>Export Regulations</b></p>	<p>The Arms Export Control Act, 22 USC 2751-2794, including the International Traffic in Arms Regulations (ITAR), and the Export Administration Act, 50 USC app 2401-2420, including the Export Administration Regulations (EAR), all of the foregoing as amended from time to time (whether before, on or after the date of this Agreement).</p>

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<b>"Force Majeure"</b>	any act, event or omission beyond the affected Party's reasonable control, which may include, without limitation, including strikes, lock-outs or other industrial disputes (but only where it involves the workforce of a third party), natural catastrophic event, war (declared or undeclared), riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, fire or flood.
<b>"Goods"</b>	the goods detailed in the Order.
<b>"Good Industry Practice"</b>	the exercise of that degree of skill, diligence, prudence, foresight and operating practice which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same or a similar business as the relevant party where such person was seeking in good faith to comply with its contractual and other obligations.
<b>"Group"</b>	in relation to a company (wherever incorporated), that company, any company of which it is a subsidiary (its holding company) and any other subsidiaries of any such holding company.
<b>"Intellectual Property Rights"</b>	(i) patents, inventions, designs, copyright and related rights, database rights, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (ii) proprietary rights in domain names; (iii) know-how and confidential information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world.
<b>"ITAR"</b>	International Traffic in Arms Regulations.
<b>"Losses"</b>	any claims or alleged claims, damages, actions, proceedings, losses, liabilities, penalties, fines, judgements, demands, costs, expenses and fees (including legal and other professional fees).
<b>"KSA"</b>	The Kingdom of Saudi Arabia.
<b>"Material Safety Data Sheet"</b>	a document providing both workers and emergency services with the proper procedures for handling or working with a particular substance including, but not limited to, physical data (melting point, boiling point, flash point etc), toxicity health effects, first aid, reactivity, storage, disposal, protective equipments and spill/leak procedures).
<b>"Order"</b>	the purchase order placed by the Purchaser on the Supplier in respect of the Supplies, these Standard Conditions, the Special Conditions, the Specification and any other relevant documents which if referenced, shall be referenced in, apply to and be incorporated into it.
<b>"Order Acknowledgement"</b>	the Purchaser's acceptance document issued with the Order or Order amendment for completion by the Supplier.
<b>"Part 130 Payment"</b>	any fee, commission, payment and/or political contribution that is subject to and governed by Part 130 of the ITAR.
<b>"Party"</b>	each of the Purchaser and the Supplier and includes their successors in title, permitted assignees and permitted transferees.
<b>Potential ITAR Materiel</b>	a specific article(s), service(s) and/or data which the Supplier is unable to conclusively determine whether it is controlled under the ITAR or EAR.
<b>"Purchaser"</b>	the BAE Systems company identified on the Order having a place of business at the address for correspondence shown on the Order.

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<b>"Relevant Laws"</b>	any applicable law , legislation, statute and or regulation in force from time to time and includes for the avoidance of doubt any amendments or extensions and subordinate legislation in force from time to time and made under it.
<b>"Services"</b>	the services of a type described in detail in the Order.
<b>"Special Conditions"</b>	the conditions set out or referenced on the Order (whether marked as Special Conditions or not).
<b>"Specification"</b>	the document (if any) which sets out the agreed design, performance, functionality of and procedures for the Supplies and any training to be provided.
<b>"Standard Conditions"</b>	these BAE Systems Saudi Arabia Standard Conditions of Purchase for Saudi Arabia November 2017 Edition
<b>"Supplier"</b>	the supplier on which the Order is placed.
<b>"Supplies"</b>	any goods, materials, work or services (including for the avoidance of doubt the Goods and Services) which are to be provided by the Supplier to the Purchaser pursuant to the Order.
<b>"VAT"</b>	value added tax as provided for in the the Unified GCC Agreement for VAT
<b>"Warranty Period"</b>	the twelve (12) calendar month period from the date of acceptance of Supplies in accordance with Clause 11.
<b>"Withholding Tax"</b>	a tax on companies not resident in KSA deriving income from a Kingdom of Saudi Arabia source as defined by the Kingdom of Saudi Arabia's department of zakat and income tax.

- 1.2 Clause headings are for convenience only and shall not affect the interpretation of the Order.
- 1.3 Words in the singular shall include the plural and vice versa.
- 1.4 Except as stated elsewhere and agreed by the Parties all dates mentioned and listed in the Order shall be dates under and in accordance with the Gregorian Calendar.
- 1.5 A reference to a law , statute or otherwise is a reference to it as it is in force for the time being, taking account of any amendment or extension and includes any subordinate legislation for the time being in force made under it.
- 1.6 In the event that any Standard Condition contained or incorporated into this Order is nullified or made void by any relevant law or decision or decision of the court having jurisdiction then the other Standard Conditions shall remain in force and effect and the Parties shall use their best endeavours to negotiate and agree a further provision which is enforceable in the relevant jurisdiction and reflects the spirit and intention of the Standard Condition nullified or made void.

**2. CONTRACT FORMATION**

- 2.1 The Order constitutes an offer by the Purchaser to purchase the Supplies **provided that**, if the Order is not accepted in accordance with the provisions of Clause 2.2 below within fourteen (14) days of the date of the Order, the Purchaser's offer will lapse without the Purchaser incurring any liability to the Supplier.

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- 2.2 The Supplier shall accept the Order by signing and returning the Order Acknowledgement. Alternatively, if the Supplier fails to do this, the Supplier shall be deemed to have accepted the Order as soon as it commences work, when the contract shall be established.
- 2.3 Further to the Supplier's acceptance or deemed acceptance of the Order in accordance with Clause 2.2, the Order shall constitute a legally binding contract between the Parties.
- 2.4 The Parties acknowledge that the Order Acknowledgement will contain some details relevant to the description and/or delivery of the Supplies. The Supplier agrees that these details relate only to the specifics and mechanics of performance and do not constitute a counter offer.
- 2.5 It is expressly agreed that any other terms and conditions of business contained in any acknowledgements, standard forms or other documents issued by either Party or in the quotation, letter of offer, technical proposal or other similar documents issued by the Supplier to the Purchaser in respect of the Supplies or implied by trade custom, practice or course of dealing shall not apply.
- 2.6 In the event of any conflict, the following order of precedence shall apply:
- 2.6.1 the Special Conditions
  - 2.6.2 these Standard Conditions;;
  - 2.6.3 the Specification; and then
  - 2.6.4 any other relevant documents referenced in the Order.

### 3. SUPPLIER'S RESPONSIBILITIES

- 3.1 The Supplier shall provide the Supplies to the Purchaser in accordance with the Order.
- 3.2 The Supplier shall:
- 3.2.1 at all times comply with the Relevant Laws and national standards issued by the Saudi Arabian Standards Organisation ("**SASO**") from time to time and any other standards provided by the Purchaser including, but not limited to, those relating to health, safety and environment, which are relevant to any of the Supplies;
  - 3.2.2 not provide any Supplies which are intrinsically hazardous to life or harmful to the environment, without appropriate arrangements being agreed with the Purchaser in advance in writing. When supplying chemicals the Supplier shall provide the Purchaser with the appropriate full specification Material Safety Data Sheets;
  - 3.2.3 ensure that waste and surplus materials and the like arising from any Supplies are not deposited on any area other than a public or private disposal facility controlled or recognised by relevant authorities and/or the Government of the Kingdom of Saudi Arabia (and, where applicable, credit the Purchaser with any relevant income arising from the surplus materials);
  - 3.2.4 comply with all Relevant Laws relating to the environment and the controlled disposal of waste;
  - 3.2.5 notify the Purchaser as soon as it becomes aware of any health and safety hazards or issues which arise in relation to any Supplies;
  - 3.2.6 comply with all the Relevant Laws of KSA that direct where possible, all services, materials and equipment in respect of the Supplies under the Order are procured where available in KSA;
  - 3.2.7 the Supplier will implement an environmentally sustainable supply chain; and
  - 3.2.8 where requested by the Purchaser provide to the Purchaser:

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- 3.2.8.1 Shareholder guarantee(s) relating to (i) the organisation and structure of the Supplier; and (ii) the performance of the Supplier's obligations pursuant to the Order, from a member of the Supplier's Group and upon the terms which in each case are acceptable to the Supplier.
  - 3.2.8.2 Corporate information, relating to the Supplier and any of its subsidiaries and sub-contractors including, but not limited to:
    - 3.2.8.2.1 articles of association;
    - 3.2.8.2.2 commercial registration certificates;
    - 3.2.8.2.3 details of all directors and managers;
    - 3.2.8.2.4 copies of all resolutions, powers of attorney relating to all the directors and managers;
    - 3.2.8.2.5 details and evidence of the authorisations in place granting power to the employees of the Supplier to accept the Order on behalf of the Supplier and bind the Supplier to these Standard Conditions;
    - 3.2.8.2.6 details of all the Supplier's Group companies and subsidiaries;
    - 3.2.8.2.7 the latest audited accounts; and
    - 3.2.8.2.8 copies of all Zakat and Income tax certificates and registrations as well as GOSI, Chamber of Commerce and Industry and SAGIA licences.
  - 3.2.8.3 Details of all licences, permissions, authorisation, registrations, consents and/or approvals in relation to the operation of Supplier and any of its Group companies, and sub-contractors.
- 3.3 The Supplier shall:
- 3.3.1 obtain, maintain and observe all regulatory approvals required for the provision of the Supplies; and
  - 3.3.2 as the Supplies may be exported, re-exported or transferred by the Purchaser, notify the Purchaser of any export/import restrictions that may exist and/or apply with respect to the Supplies. In addition, the Supplier shall comply with requirements of Clause 6.
- 3.4 BAE Systems is committed to protecting the personal information and privacy of its employees, their families and our customers. The supplier must always ensure that they handle personal information about BAE Systems' employees and customers by avoiding disclosures of information to third parties and taking appropriate physical, organisational and technological steps to safeguard personal information. In the event that the Supplier processes any personal information on behalf of the Purchaser, the Supplier hereby confirms that it will enter into a data processing agreement in the form proposed by the Purchaser and as required by the applicable data protection legislation
- 3.5 Any drawings, information or documentation to be provided by the Supplier to the Purchaser shall be in one hard copy and one machine-readable copy in reproducible format unless otherwise agreed. The Purchaser reserves the right to make copies of the same at no charge.
- 3.6 If the Supplier sells, provides or utilises any materials in an electronic form or format (including, but not limited to, e-mails and computer programs) for or in connection with the provision of Supplies under the Order, the Supplier shall ensure that each such materials shall be free from viruses, bugs and logic bombs or other unauthorised, malicious or malignant code, program, routine or software protocol which disables, disrupts, restricts, slows down, impedes or otherwise obstructs the proper performance and operation of a computer system or any application run on such system.
- 3.7 The Purchaser's Group operates a Sustainable Development Policy. The details of its Sustainable Development Policy can be found at [www.baesystems.com](http://www.baesystems.com). It expects and encourages all its suppliers to embrace similar standards to its own and will work with them to share best practice and stimulate improved performance where needed.

**4. OBLIGATIONS IN RELATION TO THE SUPPLIES**

- 4.1 Without prejudice to any other rights the Purchaser may have the Supplier hereby warrants, represents and undertakes that it shall at all times in relation to the Services:
- 4.1.1 perform the Services in an efficient, professional and workmanlike manner at the location and at the time (or within the period) specified in the Order;
  - 4.1.2 perform the Services with all reasonable care and skill;
  - 4.1.3 observe and comply with the lawful and reasonable directions of the Purchaser in relation to the provision of the Services including the Purchaser's requirements as to the provision of the Services and matters ancillary to the same;
  - 4.1.4 perform the Services in accordance with Good Industry Practice; and
  - 4.1.5 ensure that all personnel engaged in the provision of the Services are suitably qualified to provide those Services.
- 4.2 Without prejudice to any other rights Purchaser may have, the Supplier hereby warrants, represents and undertakes to the Purchaser that the Goods will:
- 4.2.1 conform as to quantity, quality and description with the particulars stated in the Order;
  - 4.2.2 be of sound materials and workmanship;
  - 4.2.3 be equal in all respects to the Specifications (if any) and any samples or patterns provided by either Party and accepted by the other;
  - 4.2.4 be capable of any standard of performance specified in the Order;
  - 4.2.5 if the purpose for which the Goods are required is indicated in the Order either expressly or by implication, be fit for that purpose; and
  - 4.2.6 be free from defects (whether actual or latent) in design, materials and workmanship.

**5. SUPPLIER'S PERSONNEL AND LABOUR**

- 5.1 The Supplier shall in the execution of each Order observe and comply with all KSA Relevant Laws in respect of labour and work including, but not limited to, its legal obligations to its employees agents and sub-contractors in respect of work on or relating to the Order and shall submit to the Purchaser such evidence as the Purchaser shall require to confirm that the Supplier has discharged all its legal obligations to its employees and complied with KSA Relevant Laws including, but not limited to, KSA residence and social security and labour Laws.
- 5.2 The Supplier will comply with KSA Government directives on Saudisation and will use best endeavours to improve on the targets defined in these directives. On request and where appropriate the Supplier shall provide to the Purchaser a copy of the Supplier's Saudisation Plan
- 5.3 The Supplier shall comply with the applicable provisions of KSA residence, social security and labour laws and shall give first priority to KSA nationals in filling positions. The Supplier shall make his own arrangements for the engagement of all labour, local or otherwise. Payment for medical attention, medical expenses, entry visas as applicable, work permits as applicable, GOSI charges and any other payments, in every respect, required by any KSA Government agency shall be the responsibility of the Supplier.
- 5.4 In the event that the Purchaser considers that any legal obligations including, but not limited to, those set out in Clause 4, have not been discharged it may deduct from any monies due and payable to the Supplier hereunder such amount as the Purchaser considers is required to discharge such obligations. Should the Purchaser be required to discharge directly to the Supplier's employees or those of any of its

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sub-contractors any such legal obligation, without having deducted from any payments due hereunder sums sufficient to cover the same it shall be entitled to recover all sums so paid from the Supplier.

- 5.5 The Supplier shall provide its employees with and ensure that its employees, agents and sub-contractors use any protective clothing and safety equipment required in providing any Supplies to the Purchaser.
- 5.6 The Supplier shall ensure that its employees, agents and sub-contractors are made aware of and comply with the security classification of any information relating to the Supplies (including, if applicable, under the Official Secrets Act 1911 to 1989 of the United Kingdom, and any KSA Government security classifications) and comply with any IT security requirements imposed by the Purchaser. In addition, and in the event applicable the Supplier shall inform the Purchaser of any security classification that relates to the Supplies and must be adhered to by the Purchaser.
- 5.7 The Purchaser shall be responsible for ensuring that any of the Supplier's employees, agents and sub-contractors who have a need to work on the Purchaser's site (or the Customer's site) are cleared in advance and in accordance with the relevant security procedures. In order for the Purchaser to obtain the relevant security clearances the Supplier will promptly provide all information required by the Purchaser. In the event that any such employees, agents and sub-contractors are not security cleared, the Purchaser shall promptly notify the Supplier and the Supplier shall replace such person immediately (at no additional cost to the Purchaser) on receiving notice.
- 5.8 The Supplier shall at all times be responsible for its employees, agents and sub-contractors and shall ensure that they, when within the boundaries of the Purchaser's site (or the Customer's site):
  - 5.8.1 are made aware of and comply with rules, regulations and requirements of that site as may be in force for the time being (including any security requirements), copies of which will be provided, on request, by the relevant site security manager;
  - 5.8.2 shall not without the Purchaser's prior written consent use any of the Purchaser's (or the Customer's) site equipment or services;
  - 5.8.3 permit the relevant site security personnel to stop and search them and any of their vehicles when entering or leaving that site and to also search any of their huts, toolboxes or other equipment or property on that site at any time; and
  - 5.8.4 adhere to the rules and regulations notified in advance to the Supplier in writing, regarding their connection, either directly or via remote access, to any part of that site's IT network.
- 5.9 At the Purchaser's request, the Supplier shall remove any of its employees, agents and sub-contractors where the Purchaser considers that it is not in the interests of the Purchaser for them to be engaged in the provision of the Supplies and the Supplier shall replace the same with another person having appropriate qualifications, training and expertise (at no additional cost to the Purchaser).
- 5.10 The Purchaser and the Customer shall also have the right to refuse access to its and/or their site to anyone who in the opinion of the Purchaser and/or the Customer is not a fit and proper person to have access to the site. The Purchaser shall notify the Supplier as soon as reasonably practicable if it or the Customer does refuse access and shall specifying the reasons for such refusal.

**6. EXPORT CONTROL**

- 6.1 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 6.2.2 below) in fulfilling the Order and will provide all information about the Supplies, including where relevant information regarding constituents parts thereof, that may be necessary for the Purchaser's compliance with all applicable import and export control laws and regulations.
- 6.2 If any of the hardware, technical data, software and/or technical assistance, including any constituent part thereof, to be provided by or through the Supplier under the Order are controlled under the ITAR or EAR, the Supplier shall:
  - 6.2.1 notify the Purchaser in writing at the time the Order is accepted;

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- 6.2.2 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;
- 6.2.3 immediately after the Order is accepted consult with the Purchaser and all other relevant third parties about the relevant authorisations required from the appropriate US authority/authorities and request from the Purchaser and such relevant third parties information necessary to make the Supplier's authorization request complete and accurate, including, without limitation, full details of end use, end user(s), intermediate consignees and any other requirements such as nationality, location or pre-existing company organisation authorisations which may be applicable;
- 6.2.4 obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to the Purchaser in accordance with the delivery dates required under the Order (time being of the essence);
- 6.2.5 in addition to the notification at 6.2.1 above, provide the following information and documentation in writing at the time the Order is accepted: (a) a description of any and all ITAR/EAR controlled material contained in or as part of the Supplies; (b) the name and address of the US exporter and/or manufacturer of such ITAR/EAR controlled material; (c) the part reference number for the ITAR/EAR 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) or, as the case may be, EAR Commerce Control List Export Control Classification Number (or other EAR designation);
- 6.2.6 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: (e) 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; and (f) full copies of such licences, agreements or other authorisations including any correspondence with the relevant US authority/authorities consenting to or giving guidance on the use of exemptions or exceptions or listing provisos.
- 6.3 The Supplier shall ensure that when describing the ITAR/EAR controlled material as part of clause 6.2.5, such description shall not in itself constitute an authorised export, re-export or re-transfer of such ITAR/EAR controlled material.
- 6.4 The Supplier hereby represents, warrants and undertakes that there is no other ITAR/EAR controlled material contained in or as part of the Supplies beyond what is notified and described by the Supplier to the Purchaser in accordance with this clause.
- 6.5 Notwithstanding clause 19 (Force Majeure), copies of the licences, agreements or other authorisations required under clause 6.2.6(f) must be provided no later than thirty (30) days prior to the first agreed scheduled delivery date of the Supplies. Any commercially sensitive information contained within licences or agreements may be deleted providing it does not prevent identification of any relevant constraint; any provisos and conditions; the end users or the parties and/or consignees.
- 6.6 ITAR Delivery. Unless the applicable regulations (i.e., 22 C.F.R. 123.9) have been revised to require otherwise, for each ITAR controlled item or document being delivered the following statement shall be included as an integral part of the bill of lading, air waybill, or other shipping document, the purchase documentation or invoice, and in the case of ITAR Technical Data, on the document itself:
- 6.6.1 in respect of ITAR Hardware, "These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption."; and
- 6.6.2 in respect of ITAR Technical Data, "EXPORT CONTROLLED DATA: This document contains technical information whose export is governed by the U.S. International Traffic in Arms Regulations (ITAR). These commodities are authorized by the U.S. Government for export

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only to [country of ultimate destination] for use by [end user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption.”.

- 6.7 EAR Delivery. Unless the applicable regulations (i.e., 15 C.F.R. 758.6) have been revised to require otherwise, for each EAR controlled item or document being delivered the following Destination Control Statement shall be included as an integral part of the invoice and bill of lading, air waybill, or other export control document that accompanies the shipment, and the document itself in the case of EAR Technology: “These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.” In addition, the licence number(s) for each applicable EAR or ITAR licence and the ECCN for each “600 Series” item being exported must be included.
- 6.8 Any outer package containing the controlled material should be marked/labelled with an Export Control statement as described in 6.5 and 6.6 above as appropriate to the nature, size, packaging, etc. of the item.
- 6.9 Where practical, the Supplier shall segregate deliveries of ITAR or EAR controlled material from other deliveries, and shall not mix ITAR-controlled items, data and services with EAR-controlled items, data and services on the same licences, agreements or authorisations.
- 6.10 Without limiting the foregoing, the Supplier shall only use ITAR Technical Data received from the Purchaser 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 item, data or services, to include transfer to a person (including lower-tier sub-contractors within the same country) who is not a “U.S. Person” as defined in the ITAR (22 C.F.R. 120.15), 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 both data furnished by the Purchaser 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. Additionally, no disclosure of data furnished by the Purchaser can be made unless and until the Purchaser has considered the request and provided its written approval through contractually authorised channels.
- 6.11 The Supplier hereby authorises the Purchaser to disclose any and all confidential information belonging to the Supplier 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.
- 6.12 The Supplier shall immediately notify the Purchaser 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.
- 6.13 If engaged in the business of either exporting or manufacturing (whether exporting or not) US defence articles or defence services, 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.
- 6.14 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.
- 6.15 If US defense articles or defense services subject to ITAR form a part of the Order, the Seller recognizes and accepts that the Seller and the Purchaser have disclosure requirements when making applications for the export or re-export of US defense articles or defense services valued in an amount of \$500,000 or more, which disclosure requirements relate to the payment of any political contribution, fee or

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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 the Purchaser, the Supplier shall make a written certification to the Purchaser in a timely manner and not later than 20 days after receipt of such request regarding:

- 6.15.1 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 \$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 \$1,000 or more; and
- 6.15.2 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
- 6.15.3 the Supplier shall notify the Purchaser immediately if the circumstances described in clauses 6.15.1 or 6.15.2 change, and shall respond promptly to any written inquiry made by the Purchaser seeking to confirm or update the Supplier's certification as provided in this clause 6.15..
- 6.16 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 the Purchaser in the event of changed circumstances affecting the said licence or agreement.
- 6.17 The Supplier shall return, or at the Purchaser's direction, destroy all of the technical data exported to the Supplier pursuant to the Order upon fulfilment of its terms and create and maintain the records required under the ITAR and EAR and all other applicable import and export control laws and regulations.
- 6.18 The Supplier shall, as soon as reasonably practicable, obtain written determination from the appropriate US authority/ authorities (in accordance with the Commodity Jurisdiction process as described in Section 120.4 of the ITAR) whether or not any part of the Supplies which the Supplier has not been able to conclusively determine is controlled under the ITAR or EAR is actually ITAR/EAR controlled material. Pending such a determination by the appropriate US authority/ authorities the Supplier shall be wholly responsible for the accuracy of any interim classification of the Potential ITAR Material and shall take into account the considerations and views of the Purchaser (if any).
- 6.19 If title and/or control of the Supplies does not pass to the Purchaser or its properly authorised agent(s) in a specific delivery, the Supplier shall ensure a written statement to the effect that title and/or control of the Supplies, including the ITAR/EAR controlled material contained in or as part of the Supplies, does not pass to the Purchaser, certified by a properly authorised representative of the Supplier, is provided to the Purchaser.  
  
For the purposes of this Clause 6.19 only, "title" shall mean legal title and "control" shall mean physical control on property owned and/or controlled by the Purchaser.
- 6.20 Subject to Clause 6.21, but otherwise notwithstanding anything to the contrary in this Order, the Supplier hereby irrevocably and unconditionally agrees to defend, indemnify and hold harmless the Purchaser and any of its agent(s) and/or customer(s) (together the "Indemnified Parties"), from time to time, in full and on demand and keep the same so indemnified from and against any and all claims, damages, actions, proceedings, losses, liabilities, penalties, fines, judgements, demands, costs and expenses ("Losses"), whether any of the foregoing are direct, indirect or consequential which are made, brought against, incurred or suffered by any of the Indemnified Parties from time to time, to the extent directly or indirectly, whether wholly or in part, resulting from any act or omission of the Supplier, or its subcontractors, agents or suppliers or in the performance of any of the Supplier's obligations under this Clause 6.

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6.21 The indemnity in Clause 6.20 shall not extend to any Losses in the event and to the extent that such losses are caused solely by:

(a) the negligence of the Purchaser; or

(b) a breach of any of the provisions of this Clause 6 by the Purchaser.

### 7. FEES AND COMMISSIONS

7.1 The Supplier hereby warrants, undertakes and confirms that it has not made nor will make any Part 130 Payments to any third party including, but not limited to agents, contractors, government officials and/or suppliers (together the "**Third Parties**") unless it has obtained written consent from the Purchaser. Any such consent granted in accordance with this Clause 7.1 shall be conditional on the Supplier providing to the Purchaser any and all information that the Purchaser deems necessary to comply with its obligations under the ITAR or otherwise.

7.2 The Supplier hereby irrevocably and unconditionally agrees to defend, indemnify and hold harmless the Purchaser, from time to time in full and on demand and keep the Purchaser so indemnified from and against any and all Losses whether any such Losses are direct, indirect or consequential which are made, brought against, incurred or suffered by the Purchaser from time to time, to the extent directly or indirectly, whether wholly or in part, resulting from any act or omission of the Supplier, or its subcontractors, agents or suppliers or in the performance of any of the Supplier's obligations under this Clause 7 and the ITAR.

### 8. ETHICS

8.1 The Supplier undertakes and covenants to the Purchaser that it shall:

8.1.1 comply at all times with all requirements of all Relevant Laws and any Anti-Corruption Law;

8.1.2 promptly notify the Purchaser of any Claim (as defined in Clause 14.1.5); and

8.1.3 notwithstanding any provision of the Anti-Corruption Laws, not make any facilitating or expediting payment for the purpose of expediting or securing the performance of any routine governmental action as defined in the FCPA, 15 U.S.C. section 78m.

8.2 The Purchaser maintains an ethics programme that includes a written code of conduct, training and awareness for all employees, details of which can be found at [www.baesystems.com/AboutUs/OurglobalCodeofConduct/index.htm](http://www.baesystems.com/AboutUs/OurglobalCodeofConduct/index.htm). It expects and encourages all its suppliers to embrace ethical values 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 UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977.

8.3 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 [www.baesystems.com](http://www.baesystems.com).

### 9. QUALITY

9.1 The Supplier shall provide the Supplies subject to all reasonably applicable quality standards and to those set out as a Special Condition and/or in the Specification and/or where applicable in the Purchaser's quality approval/authority issued to the Supplier reference IP/QAP/MNT/001 at the latest issue which can be provided on request.

9.2 Upon the Purchaser providing reasonable notice, the Supplier shall (and procure that its agents and sub-contractors shall) at no additional cost to the Purchaser or the Customer:

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- 9.2.1 allow the Purchaser and persons authorised by the Purchaser (which may include the Customer) access to the Supplier's premises (and procure access to those of its agents and sub-contractors) as are being used to carry out work on the Supplies in order to inspect and audit the facilities, processes and procedures used in manufacturing the Supplies;
  - 9.2.2 provide data to the satisfaction of the Purchaser relating to progress of work on the Supplies and their quality; and
  - 9.2.3 provide and procure all assistance (including, where appropriate, access to office accommodation, telephone and fax facilities) to enable the above-referenced rights to be fully exercisable.
- 9.3 Unless otherwise specifically agreed in writing, all Supplies shall be new .

### **10. DELIVERY**

- 10.1 Delivery of the Supplies shall be on or before the delivery date specified in the Order and to the address specified in the Order, unless otherwise stipulated in writing by an authorised representative of the Purchaser.
- 10.2 The Parties shall acknowledge and agree that time for delivery of the Supplies shall be of the essence of the Order.
- 10.3 The delivery terms in respect of any Supplies shall be Delivered Duty Paid (Incoterms 2010) unless otherwise amended or restated in these Standard Terms and/or the Order.
- 10.4 The Supplier shall be wholly responsible in every respect for the unloading and risk of unloading of the Supplies at the place of delivery stipulated in the Order.
- 10.5 The Goods shall be properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport having regard to the nature of the Goods and the other circumstances of the case.
- 10.6 The Supplier shall quote the Order number and item number on all documents and packages sent by it to the Purchaser in respect of the Order.
- 10.7 On delivery of each consignment of the Supplies, the Supplier shall deliver to the Purchaser such documents as are required by the Order, including, without limitation, customs export documents, advice notes, certificates of conformity and civil approved certificates and, if the Supplier is not the original manufacturer of the Supplies, copies of the original manufacturer's certificate of conformity or civil approved certificate together with test figures, heat treatment particulars etc, where applicable.
- 10.8 If the Supplier fails to comply with the provisions of this Clause 10, the Purchaser shall be under no obligation to accept delivery of the relevant consignment.

### **11. ACCEPTANCE**

- 11.1 Where acceptance tests are set out as a Special Condition and/or in the Specification, acceptance of Supplies delivered shall be subject to completion of the acceptance tests to the satisfaction of the Purchaser.
- 11.2 Where no acceptance tests are set out as a Special Condition and/or in the Specification, the Purchaser shall have the right to inspect the Supplies after delivery and acceptance shall take place if the Supplies are satisfactory to the Purchaser on inspection or, if no inspection is made, the Supplies shall be accepted on the earlier of (a) when they have been taken into final and beneficial use by the Purchaser or (b) twenty-eight (28) days after delivery in accordance with Clause 10 above.
- 11.3 If the Purchaser is not satisfied that the Supplies are delivered in accordance with the Order, the Purchaser may in its absolute discretion:
  - 11.3.1 reject them in whole or in part; and/or

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11.3.2 give notice to the Supplier to repair or replace them without delay at the Supplier's expense and risk.

### 12. RISK & TITLE

12.1 Risk in any Goods shall pass to the Purchaser upon delivery in accordance with Clause 10 above.

12.2 Title to any Goods shall pass to the Purchaser upon acceptance in accordance with Clause 11 above.

### 13. PRICE & PAYMENT

13.1 Where the prices are agreed at the time of the Order, they shall be set out as a Special Condition. Where prices are not agreed at the time of the Order, they shall be agreed prior to commencement of work on the Order by the Supplier (or as soon as possible thereafter) and they shall then be incorporated in the Order by amendment in accordance with Clause 27 below.

13.2 Prices shall be non-revisable and shall be exclusive of VAT

13.3 If VAT is payable, it shall be separately identified on the invoice and shall be payable by the Purchaser subject to receipt of a valid VAT invoice.

13.4 No additional charges shall be payable by the Purchaser for packaging, insurance or delivery unless otherwise agreed and set out as a Special Condition and any such charge shall be separately identified on the invoice.

13.5 Prices shall be payable by the Purchaser to the Supplier in accordance with the provisions of this Clause 13.

13.6 The Supplier shall submit to the Purchaser on or after the acceptance of the Supplies in accordance with Clause 11 an invoice in respect of the Supplies properly provided. Where applicable, a valid VAT invoice should be provided. Subject to Clause 13.8 unless otherwise stated on the Order each correctly submitted invoice shall become due for payment at the end of the calendar month following the calendar month in which the invoice is received provided that the Supplies have been delivered by the Supplier and accepted by the Purchaser.

13.7 Each invoice must be sent to the Finance Department at the Purchaser's address stipulated in the Order and it must reference the Order number with respect to the Supplies together with the delivery advice note number and date.

13.8 The Supplier acknowledges and agrees that invoices shall only be passed for payment by the Purchaser if they comply with the provisions of this Clause 13. Should any invoice contain incomplete information or an incorrect or invalid charge, the Purchaser will be entitled to reject such invoice and return it to the Supplier or ask the Supplier to have it rectified and resubmitted (any such rectified invoice shall become due for payment at the end of the calendar month following the calendar month in which the resubmitted invoice is received) or request the Supplier to issue a credit note to correct the error.

13.9 The Supplier agrees that the Purchaser shall not be required to make payments in accordance with this Clause 13 where the Supplier is in breach of any term of the Order or these Standard Conditions.

13.10 Unless otherwise stated on the Order payments to the Supplier shall be made by the Purchaser in Saudi Arabian Riyals (SAR) (or the agreed currency of the Order) Electronic Funds Transfer ("EFT") or any established standing order.

13.11 Without prejudice to any other right or remedy the Purchaser may have, the Purchaser shall be entitled to deduct any payment owed by it to the Supplier under the Order against any sums that are due and payable by the Supplier to the Purchaser under the Order and/or any other agreement.

13.12 Where any cost or expense under the Order is to be reimbursed, refunded or taken into account in any computation, the amount of that cost or expense shall be net of any VAT to the extent that the person meeting such cost or expense is able to recover such VAT as input tax under relevant legislation

**14. WARRANTY**

- 14.1 The Supplier warrants and represents to the Purchaser that the following statements are true and accurate and not misleading as of the date of contract formation in accordance with Clause 2 and on each date that the Supplier submits an invoice pursuant to Clause 13:
- 14.1.1 The Supplier is validly existing and is a company duly incorporated under the laws of its jurisdiction or incorporation.
  - 14.1.2 The Supplier has the legal right and full power and authority to deliver the Supplies in accordance with the Order.
  - 14.1.3 Not one of the Supplier, the Supplier's Group, or the employees of the Supplier or Supplier's Group is a Conflicted Person.
  - 14.1.4 All authorisations, consents and licences necessary for the Supplier, its employees and subcontractors to undertake the obligations set out in the Order have been obtained, are in full force and effect and have been and are being complied with.
  - 14.1.5 The Supplier is not involved in any actual or threatened claim, legal action, proceeding, or investigation which could have an effect on (i) the ability of the Supplier to perform its obligations under the Order; (ii) the reputation of the Supplier or the Purchaser; (iii) the validity of the Order; and/or (iv) the rights and remedies of the Purchaser under the Order ("**Claim**").
- 14.2 The Supplier shall:
- 14.2.1 have provided at the date of contract formation in accordance with Clause 2 (or within such period following the date of contract formation as agreed in writing by the Purchaser); and
  - 14.2.2 provide at the reasonable request of the Purchaser before expiry or termination of the Order
- such information and documents to the Purchaser (to the satisfaction of the Purchaser) as requested by the Purchaser, in satisfaction of the warranties contained in these Standard Conditions including, but not limited to, Clause 14.1 above and the requirements of Clause 3.2 and 20.1.
- 14.3 Without prejudice to any other remedies of the Purchaser if there is a defect in the Supplies during the Warranty Period, the Supplier shall without delay, upon receipt of notice from the Purchaser but at the absolute discretion of the Purchaser:
- 14.3.1 refund the Purchaser the price of the defective Supplies; or
  - 14.3.2 in the case of Goods repair or replace (at the sole discretion of the Purchaser) the defective Goods (such repairs or replacements for the avoidance of doubt will also be subject to the Warranty Period) at the Supplier's own expense and risk provided that, if the Supplier fails to do so, the Purchaser may arrange for them to be repaired or replaced (and all such costs incurred by the Purchaser shall be refunded by the Supplier within seven (7) days of the date the Purchaser's invoice is issued), and in either case the warranty shall continue for twelve (12) calendar months from the date of acceptance by the Purchaser of the repaired or replacement Supplies; or
  - 14.3.3 in the case of the Services re-perform any Services found to have been performed defectively, or otherwise not in accordance with the Order, within 12 months of the date of their performance.
- 14.4 The Supplier agrees that all warranties attaching to the Supplies shall be capable of being assigned to a Customer or other nominee by the Purchaser without prior written notice to the Supplier.
- 14.5 The provisions of this Clause 14 shall survive termination of the Order, howsoever arising.

**15. INDEMNITY AND LIABILITY**

- 15.1 The Supplier shall indemnify and hold harmless, the Purchaser and any of its group including, but not limited to, any connected companies and/or subsidiaries, against any and all actions, suits, demands,

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charges, liabilities, losses, claims, costs, charges, fees (including legal and other professional fees), expenses or damages of any nature whatsoever and howsoever arising and incurred by the Purchaser as a result of or in connection with:

- 15.1.1 the Supplier's breach of any terms of the Order (including for the avoidance of doubt) under the Standard Conditions and/or Special Conditions and/or the Order;
  - 15.1.2 any negligent or wilful acts, omissions or defaults of the Supplier its employees, agents and sub-contractors in connection with the provision of the Supplies;
  - 15.1.3 the Supplier's breach of any of its statutory obligations in relation to the Supplies;
  - 15.1.4 any defect in the workmanship, materials or design of the Goods or their packaging;
  - 15.1.5 any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to the Supplies unless such infringement has occurred directly as a result of any specification supplied by the Purchaser
  - 15.1.6 any claim against the Purchaser arising out of any uncertain, unclear, vague, underdeveloped and/or incorrect description of the Goods and/or Services by the Supplier;
  - 15.1.7 the performance (or non-performance) by the Supplier and/or any contractors and/or agents under the Order
- 15.2 Subject to Clause 15.3, the maximum aggregate liability of Purchaser under or in connection with the Order, howsoever arising (whether by contract, tort (including negligence) or otherwise will not exceed the price paid under the Order
- 15.3 The Purchaser shall not be liable for:
- 15.3.1 any loss of profit;
  - 15.3.2 any loss of revenue;
  - 15.3.3 any loss of goodwill;
  - 15.3.4 any loss of contracts; or
  - 15.3.5 any indirect or consequential loss
- arising out of or in connection with the Order (including for the avoidance of doubt) these Standard Conditions howsoever arising, whether under contract, tort (including negligence), or otherwise.
- 15.4 Nothing in the Order and/or these Standard Conditions shall exclude or limit the liability of either Party to the other for death or personal injury resulting from its negligence or for any other liability which may be excluded or limited by law .
- 15.5 The provisions of this Clause 15 shall survive termination of the Order, howsoever arising.

## 16. INSURANCE

- 16.1 The Supplier shall, as a minimum, maintain the following primary insurance policies with reputable insurers authorised to conduct business in the jurisdictions in which the Order is performed against all risks usually insured against by suppliers carrying on the same or a similar business as the Supplier which shall include protection for claims for third party legal liability for injury or damage and for negligent acts or omissions which result in a claim for any form of financial loss against the Purchaser as a result of the provision to it of the Supplies, including without limitation and without derogating from or limiting the provisions of Clause 15 above:
- 16.1.1 a policy of insurance relating to General Liability Insurance of an amount not less than SAR 10,000,000 (ten million Saudi Arabian Riyals) per event or series of events (or such other sum as the Purchaser may specify) in respect of loss of or damage to property of the

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- Purchaser, Customer, end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;
- 16.1.2 where notified by the Purchaser, Aviation Products Liability Insurance and/or Aviation Liability Insurance, each for a combined limit of not less than SAR 100,000,000 (hundred million Saudi Arabian Riyals) (or such other sum as the Purchaser may specify);
- 16.1.3 where notified by the Purchaser, Marine Insurance for a combined limit of not less than SAR 10,000,000 (ten million Saudi Arabian Riyals) (or such other sum as the Purchaser may specify);
- 16.1.4 a policy of insurance relating to Motor Vehicle insurance; and
- 16.1.5 any other insurance which the Supplier may be statutorily required to maintain.
- 16.2 The Supplier shall procure that such insurance is arranged on a continuing basis and evidence of such insurance protection shall upon request be provided to the Purchaser.
- 16.3 The Purchaser shall have the full benefit of such policies detailed in this Clause 16 and, where applicable, such policies shall contain an indemnity to principal clause.
- 16.4 The Supplier shall notify its insurance companies if it is required to provide some of the Supplies on the Purchaser's site (or the Customer's site) where there is construction movement and test of military and civilian aircraft, ships and vehicles and, where applicable, the Supplier shall procure adequate insurance cover as required by such insurance companies.
- 16.5 The Purchaser shall have no liability for damages or loss to any property of the Supplier or personal property of the Supplier's employees, agents or sub-contractors while such property is on the Purchaser's site (or the Customer's site), regardless of howsoever or by whomsoever such damages or loss are caused.

## 17. TERMINATION, EVENTS OF DEFAULT & REMEDIES

- 17.1 In the event of complete or partial termination of an Order under Clause 17 the Supplier shall without undue delay, upon receipt of a notice from the Purchaser under Clause 17, use all reasonable endeavours to minimise the Purchaser's liabilities and arrange for the cessation of work, including the reduction or termination of any subcontracts in respect of the Supplies.
- 17.2 The Purchaser may at any time terminate the Order for convenience on giving the Supplier fourteen (14) days written notice.
- 17.3 Each of the following events is an Event of Default:
- 17.3.1 the Supplier fails to comply with any of its obligations under the Order and either the default is not capable of remedy or, if that default is capable of remedy, the Supplier fails to remedy that default within thirty (30) days of the Purchaser giving written notice to it requiring remedy; or
- 17.3.2 the Supplier is unable to pay its debts generally as they fall due; or
- 17.3.3 a resolution is passed at a meeting of the Supplier for (or to petition for) its winding-up or administration, or the Supplier presents any petition for its winding-up or administration, or an order for the winding-up or administration of the Supplier is made, (unless in each case it is a voluntary solvent winding-up, reconstruction, amalgamation or reorganisation or part of a solvent scheme of arrangement); or
- 17.3.4 the Supplier agrees to any kind of composition, rescheduling, scheme, compromise or arrangement involving it and its creditors generally (or any class of them) as a result of financial difficulties; or
- 17.3.5 any administrative or other receiver or any manager of all or substantially all of the assets of the Supplier is appointed or an encumbrancer takes possession of, or any execution or distress is levied against, all or substantially all of the assets of the Supplier and which is not

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- paid out or discharged within thirty (30) days after such appointment, taking possession or levy; or
- 17.3.6 the Supplier is acquired by or merged with any third party or any change of control shall occur; or
  - 17.3.7 the Supplier is or may be unable, in the Purchaser's reasonable opinion, to perform its obligations under the Order.
- 17.4 On or at any time after the occurrence of an Event of Default, the Purchaser shall be entitled (without prejudice to any other right or remedy) on giving written notice to the Supplier to exercise any one or more of the following rights or remedies:
- 17.4.1 to reduce, reschedule or cancel any of the Supplies or to refuse to accept the provision of any further Supplies and in each case without having any liability to the Supplier;
  - 17.4.2 to recover such damages as it may have sustained in connection with or as a result of such Event of Default; and/or
  - 17.4.3 to terminate the Order in whole or in part.
- 17.5 Upon termination, howsoever arising, the Supplier shall return all of the Purchaser's information, tooling and data forthwith to the Purchaser and shall, if requested, provide the Purchaser with all such documentation and information as may be necessary to enable either the Purchaser or a third party to complete the Supplies ordered.
- 17.6 Upon receipt of notice of termination of the Order, the Supplier shall cease provision of the Supplies as directed by the Purchaser.
- 17.7 Termination of the Order under this Clause 17 shall not affect or prejudice the rights (accrued or otherwise) of the Parties as at termination or the continuation of any provision expressly stated to survive, or which implicitly survives, termination.
- 17.8 The terms and conditions of the Order do not derogate from any of the Purchaser's statutory and common law rights and are in addition to those rights and not in substitution for them.
- 17.9 Upon termination of this Order (for whatever reason) the Supplier will return to the Purchaser (unless instructed otherwise) any and all Confidential Information (as defined in Clause 21 below) belonging to the Purchaser and all copies of the forgoing.

**18. STEP IN RIGHTS**

- 18.1 In the event that the Supplier is in breach of the Order the Purchaser may (without prejudice to its other rights and remedies) at its option, take control of the scope of the Order ("**Affected Service**") and, in doing so, may take such other action as the Purchaser deems is reasonably necessary to deliver the Affected Service, including by engaging a third party to provide such Affected Service.
- 18.2 If requested, the Supplier will co-operate fully with Purchaser (and its agents and contractors) and provide all reasonable assistance at no charge to the Purchaser to restore the Affected Service as soon as possible, including giving the Purchaser (and its agents and contractors) reasonable access to the Supplier's premises and all other equipment, material and information used pursuant to the Order.
- 18.3 The Supplier will pay the Purchaser in respect of the Purchaser's costs and expenses arising from any exercise by the Purchaser of its rights in accordance with Clause 18.1 for the purposes of this Clause 18.3, costs and expenses will include, without limitation:
- 18.3.1 Any costs and expenses relating to the engagement (and termination) of any third party; and
  - 18.3.2 In relation to the Purchaser's' internal resource costs and expenses, any costs and expenses in addition to those normally incurred by the Purchaser to support the Order.

For the avoidance of doubt, the Supplier shall not be entitled to receive charges or other payments that relate to services performed by the Purchaser or for the Purchaser by a third party under Clause 18.1 above.

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18.4 Nothing in this Clause 18 limits the Supplier's liability to the Purchaser or Purchaser's rights with respect to any default or non-performance by the Supplier under the Order.

### 19. FORCE MAJEURE

19.1 The Purchaser shall not be deemed in breach of the Order or liable to the Supplier for delay in performing its obligations, or failure to perform any such obligations, under the Order, if the delay or failure results from Force Majeure provided that the Purchaser:

19.1.1 promptly notifies the Supplier, in writing, of the known or anticipated event which causes or may cause it;

19.1.2 produces reasonable evidence of its occurrence;

19.1.3 recommences its full performance as soon as is reasonably possible following its cessation; and

19.1.4 gives notice of the cessation of any event previously notified to the other Party as likely to result in prevention or delay in execution of the Order.

19.2 If the Purchaser is affected by Force Majeure, it will use its reasonable endeavours to mitigate its effect. The Supplier will not be entitled to any payment from Purchaser for any costs or expenses incurred as a result of it.

19.3 If a Force Majeure exceeds a continuous period of thirty (30) days, then the Purchaser shall have the right by written notice to the Supplier to terminate the Order immediately without having any liability to the Supplier except in respect of that part of the Supplies already delivered to and accepted by the Purchaser prior to such termination.

### 20. INTELLECTUAL PROPERTY RIGHTS

20.1 The Supplier hereby represents, undertakes and warrants that the Supplies and anything done by the Purchaser or its Customer in relation to the Supplies will not infringe any Intellectual Property Rights of a third party.

20.2 The Supplier shall indemnify and hold the Purchaser harmless against any and all Losses, including for the avoidance of doubt royalties, of any kind arising from the infringement or alleged infringement of any Intellectual Property Rights owned or controlled by a third party arising out of or in connection with work done under the Order or to anything done by the Purchaser or its Customer arising out of or in connection with the Supplies.

20.3 The Supplier agrees that all Intellectual Property Rights created as a result of the work undertaken by the Supplier, its agents or sub-contractors for the purpose of the Order shall vest in and be the absolute property of the Purchaser. Consequently, the Supplier hereby assigns to the Purchaser, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights created as a result of the Order and the Supplier shall (at its own cost) do all necessary acts to vest such Intellectual Property Rights in the name of the Purchaser or its nominee, such acts to include (without limitation) the execution of documents.

### 21. CONFIDENTIALITY

21.1 Except with the prior written consent of the Purchaser, the Supplier undertakes not to disclose any details of the Order or the Supplies or any other technical or commercial information, know-how, specifications, inventions, processes or initiatives of the Purchaser or any member of the Purchaser's Group ("**Confidential Information**") to any person other than a person employed by the Supplier in the carrying out of the Order or any agent or sub-contractor of the Supplier accepting a like obligation. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purpose of the Order.

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- 21.2 All documents, including (without prejudice to the generality) specifications, drawings, plans or other data and any information contained therein, and Confidential Information supplied by the Purchaser for the purposes of the Order including all copies shall remain the property of the Purchaser and shall be returned to the Purchaser on completion of the Order or upon request of the Purchaser. The Supplier shall not use or permit any third party to use such documents or such information or any document or information generated by the Supplier under the Order for any purpose whatsoever other than the fulfilment of the Order.
- 21.3 The provisions of this Clause 21 shall survive termination of the Order, howsoever arising.

### **22. INDUSTRIALISATION**

- 22.1 The Supplier acknowledges that companies within the Purchaser's Group and associated companies thereof may be entitled to utilise through the Purchaser the total value of the Contract ("**Value**") for any industrialisation credits and/or in satisfaction of any governmental requirement or otherwise.
- 22.2 The Supplier agrees that it will assist the Purchaser when required in the utilisation of the Value.

### **23. PUBLICITY**

The Supplier shall not publicise in any media or public announcement information regarding the terms of the Order or the Supplies provided without the prior written consent of the Purchaser.

### **24. NOTICES**

- 24.1 All notices (including all other documents) to be served under the Order or these Standard Conditions shall be in writing in English and shall be delivered or sent to the representative of the Supplier or Purchaser (who shall be notified along with the relevant address by the other party from time to time). A notice shall be delivered by hand or sent by a reputable courier.
- 24.2 A notice shall be deemed to have been received:
- 24.2.1 if delivered by hand between 09.00 and 16.00 on a Kingdom of Saudi Arabia working day (such time period being Sunday through Thursday except on national holidays and referred to where applicable as "Business Hours") when so delivered or, if delivered by hand outside Business Hours, at the next start of Business Hours;
- 24.2.2 if sent by a reputable courier on a Kingdom of Saudi Arabia working day, at 9.00 am on the 2<sup>nd</sup> Kingdom of Saudi Arabia working day after signing the document over to the courier.

### **25. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under the Order or by law shall constitute a waiver of that right or remedy, nor shall it preclude or restrict the exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that right or remedy.

### **26. SEVERABILITY**

If any of the provisions of the Order are found to be invalid, illegal or unenforceable this shall not affect the validity of the remaining provisions. In the event of such occurrence, the Parties shall, in so far as it is legally permitted, agree on the replacement of the relevant provision with a valid one achieving the same or a similar purpose.

### **27. AMENDMENT**

No amendment to the Order (including for the avoidance of doubt these Standard Conditions) shall be valid unless it is contained in an Order amendment issued by the Purchaser which the Supplier shall accept by signing and returning it to the Purchaser. Alternatively, if the Supplier fails to sign and/or

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return the Order amendment, it shall be deemed to have accepted the amendments by carrying out the work which reflects the amendment.

### **28. ASSIGNMENT & SUB-CONTRACTING**

- 28.1 The Purchaser may at any time assign or transfer all or any of its rights and/or obligations under the Order without the consent of the Supplier.
- 28.2 The Supplier may not sub-contract any of its obligations under the Order without the prior written consent of the Purchaser, except as is customary in the trade, provided that the supplier may not subcontract to any denied, debarred, embargoed, blocked, prohibited, specially designated, sanctioned or otherwise ineligible parties maintained by any government or international organization. Such consent from the Purchaser may stipulate conditions upon which the Supplier is permitted to sub-contract.
- 28.3 The Supplier shall not sub-contract (or use third parties including, without limitation, agents or managed service providers) to perform any of its obligations under the Order without the Purchaser's prior written consent. In order to exercise such discretion or otherwise the Purchaser may require and the Supplier shall provide relevant details of the proposed sub-contractor to the Purchaser.
- 28.4 The grant of any approval by the Purchaser of Subcontracting under this Clause 28 will not relieve the Supplier of any liability under the Order. The Supplier shall remain fully responsible and for the avoidance of doubt shall indemnify and hold harmless the Purchaser for the acts and/or omissions of their subcontractors in accordance with Clause 15.1.

### **29. ENTIRE AGREEMENT**

- 29.1 The Order constitutes the entire agreement between the Parties with respect to the subject matter of the Order and supersedes any prior discussions, oral or written agreement with respect to the subject matter of the Order provided that nothing in this Clause 29 shall exclude liability for fraudulent misrepresentation.
- 29.2 Each of the parties acknowledges that it is not entering into the Order in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in the Order and the documents referred to in it) made by or on behalf of the other Party before the execution of this Order. Each of the parties waives all rights and remedies which, but for this clause, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance, provided that nothing in this Clause 29 shall limit or exclude any liability for fraud.
- 29.3 Each Party shall at its own cost do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably requested of it by the other Party from time to time to give effect to the Order.

### **30. RIGHTS OF THIRD PARTIES**

A third party who is not a Party to the Order has no right to enforce any term of the Order.

### **31. LAW, JURISDICTION AND DISPUTE RESOLUTION**

- 31.1 The Order, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of Saudi Arabia.
- 31.2 If there is any dispute at any time between the Parties arising out of or in connection with the Order, then the Parties shall use reasonable endeavours to resolve the dispute within thirty (30) Business Days. In the event that the dispute can not be resolved amicably agree the Parties agree that the matter will be escalated to senior officials within the Purchaser's and Supplier's companies for appropriate resolution.
- 31.3 The Board of Grievance in Riyadh will have exclusive jurisdiction to settle any dispute which arises out of or in connection with these Standard Conditions and/or the Order and/or Special Conditions including (without limitation) in relation to any non-contractual obligations. The Parties irrevocably agree to submit to that jurisdiction.

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