

## **BAE SYSTEMS ES ROCHESTER SPECIAL CONDITIONS**

Where these Special Conditions conflict with currently agreed terms the following Special Conditions take precedence.

### **DEFINITIONS**

For the purpose of these Special Conditions;

The terms Goods and Supplies may be used interchangeably and shall mean any goods, including without limitation, materials, technical data, technology, software, hardware, system design documentation, prototypes, test results which are to be provided by the Supplier to the Purchaser pursuant to the Agreement and means any or all of them, as the context may require.

The terms Agreement and Order may be used interchangeably and shall mean the purchase order together with: (a) the BAE Systems Standard Conditions of Purchase; (b) the Special Conditions; (c) the Specification; and (d) any other relevant documents which are expressly referenced on the Order (or, in the absence of such express reference, are deemed to be referenced on the Order).

### **1. PROVISIONAL ACCEPTANCE**

1.1 The acceptance detailed herein is held under this Agreement to mean provisional acceptance, Supplier may invoice and be paid in accordance with the terms of the Agreement. Notwithstanding the former, the Purchaser reserves the right without liability to test and return faulty Goods at any time until incorporation by the Purchaser into Purchasers end item.

### **2. SYSTEMATIC FAULTS**

2.1 Supplier shall be responsible for, and shall remain liable for all its remedial costs in, at its option, repairing or replacing the Goods in the event that during the Purchaser's subsequent use of the Goods it is shown that the Goods contain faults of a systematic nature which were hidden from the Purchaser at the time of acceptance, and were in existence prior to the date of Delivery, and render the Goods unfit for their intended use or so diminish the Goods that the Purchaser would not have purchased them had it been aware of the faults, and as a result thereof the Purchaser can show that the requirements of the Agreement have not been met, and which:

- i) result from a common cause occurring more frequently than would be predicted from the agreed reliability data;
- ii) notified to the Supplier within one (1) month of discovery by the Purchaser;
- iii) do not arise from fair wear and tear or from failure by the Purchaser or the end-user to operate, maintain and store the Goods correctly; and,
- iv) do not arise from modification or repair damage to the Goods by a party other than the Supplier.

For the purposes of this clause "subsequent use" shall mean a period of five (5) years from acceptance of the Goods.

The term "systematic nature" shall mean the same recurring fault which occurs with sufficient regularity and is of a nature such as to justify the Purchaser in demanding analysis and or remedial action to be taken with respect to the Goods.

### **3. LIABILITIES AND THIRD PARTY INDEMNITIES**

3.1 The Supplier shall indemnify the Purchaser against any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever suffered or incurred by the Purchaser arising out of or in connection with any claim made by a third party:

- 3.1.1 arising out of or in connection with the provision of the Supplies, to the extent that such claim arises out of the breach or negligent performance by Supplier, its employees, agents or sub-contractors; and
- 3.1.2 for death, personal injury or damage to property arising out of or in connection with a defect in the Supplies, to the extent that such defect is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors.
- 3.2 Any indemnity provided by the Supplier under the Agreement shall not cover the Purchaser to the extent that a claim under it results solely and directly from the negligence or wilful misconduct of the Purchaser.
- 3.3 Nothing shall restrict or limit a Parties general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under any indemnity provided by the other Party under the Agreement.
- 3.4 Neither Party shall be liable to the other Party for any indirect and consequential losses.
- 3.5 The provisions of this clause 6 shall survive termination of the Agreement, howsoever arising.

#### **4. LAST TIME BUY**

- 4.1 Prior to any action to discontinue the provision of the Goods, the Supplier shall provide the Purchaser with a "Last Time Buy Notice" at least twelve (12) months prior to any such action.
- 4.2 Prior to any action to discontinue using a component of the Goods, by reason of, including but not limited to, obsolescence of the component, the Supplier shall provide the Purchaser with a "Last Time Buy Notice" at least twelve (12) months prior to any such action.
- 4.3 All such "Last Time Buy Notices" as detailed above should be sent to the central email address [Roch.Componenteng@baesystems.com](mailto:Roch.Componenteng@baesystems.com) as well as to the relevant buyer named on the face of the Order.
- 4.4 The provisions of this clause survive the delivery of the Goods and apply irrespective of whether the Supplier already has adequate stock of these Goods.

#### **5. ARTIFICIAL INTELLIGENCE**

- 5.1 Artificial Intelligence: The Supplier undertakes, warrants and represents not to (and shall procure any third party, whether appointed by it directly or indirectly, shall not):-
  - (i) use, disclose, permit or otherwise facilitate use, input, enter, copy, summarise (including development and/or use of prompts and/or enquires or similar) any Purchaser Information or other information belonging to the BAE Systems Group and/or any of its third party suppliers and/or customers (whether in whole or in part and/or directly or indirectly) in or connection with any AI System in any way whatsoever; and/or
  - (ii) (ii) use, access, permit or otherwise facilitate use (whether in whole or in part and/or directly or indirectly) any form of Artificial Intelligence and/or any AI Systems in any way in the provision of the Deliverables and/or Supplies under this Agreement unless the Purchaser, in its sole discretion, has: (a) given its prior written consent; and (b) appropriate terms have been entered into by the Parties by way of a Special Condition, and provided further that such Special Condition shall be incorporated into the Supplier's contractual arrangements with any third party (including any subcontractor approved by the Purchaser) used in respect of the Deliverables and/or Supplies under this Agreement.

## 6. REACH

To the extent that The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/758 and subsequent amending SIs) (“UK REACH”) or the EU Registration Evaluation Authorisation and Restriction of Chemicals Regulation (1907/2006) (“EU REACH”) (UK REACH and EU REACH, together “REACH”) apply to any Supplies, the Supplier shall:

- 6.1 Comply with REACH and other chemical legislation as applicable;
- 6.2 Where required, ensure that the substances present in the Supplies have been registered in accordance with REACH by the Supplier (where the Supplier is registered in the UK) or by the Supplier’s appointed ‘Only Representative’ registered in the UK (where the Supplier is registered outside the UK);
- 6.3 Provide to the Purchaser all necessary information in order for the Purchaser to comply with and/or be satisfied that the Supplier has complied with REACH (including without limitation, safety data sheets, information required under Article 33 of REACH (Communications on Substance of Very High Concern (SVHC) where the SVHC content of an article is greater than 0.1% w/w) for each relevant article in an assembly, chemical composition data, test data, hazard information and exposure scenarios) and permit the Purchaser to disclose such information to a third party where the Purchaser deems it necessary or is required by REACH;
- 6.4 Where a substance present in the Supplies is listed in Annex XIV of REACH, ensure and confirm to the Purchaser that such chemical substance is authorised for the Purchaser’s particular use, sale or disposal of the Supplies;
- 6.5 Promptly notify the Purchaser of any applicable restriction on the use of substances present in the Supplies as set out in the list of restrictions under UK REACH or Annex XVII under EU REACH or communicated by an authority implementing REACH which impacts, or is likely to impact, the Purchaser’s use, sale or disposal of the Supplies;
- 6.6 Promptly notify the Purchaser of any changes to such chemical substance status under REACH (for example, the move of an SVHC from the candidate list to Annex XIV of REACH); and
- 6.7 Promptly notify the Purchaser of the Supplier’s obsolescence mitigation strategy in respect of the Supplies (e.g. reformulation or discontinuation of Supplies).

## 7. INFORMATION SECURITY

- 7.1 The Supplier shall at all times implement and maintain appropriate levels of security to protect all Purchaser Information which shall:
  - 7.1.1 Comply with the relevant BAE Systems Information Security Requirements;
  - 7.1.2 Reflect Good Industry Practice; and
  - 7.1.3 Comply with all applicable laws and regulations.

In this clause 7, “BAE Systems Information Security Requirements” mean: (i) the BAE Systems information security requirements identified as “Information Security Requirements Level 1”; and (ii) any additional information security requirements that have been incorporated by way of a Special Condition, in each case as at the date of the Agreement and made available at <https://www.baesystems.com/en/what-we-do/suppliers/united-kingdom/supplier-it-security-requirements>.

- 7.2 In the event that the Supplier is unable to comply with the relevant BAE Systems Information Security Requirements, the Supplier shall immediately notify the Purchaser and put forward an implementation plan (the “Implementation Plan”) for the Purchaser’s approval. The Implementation Plan shall identify (i) the contracts with the Purchaser that are affected; (ii) a

unique identifier for the Implementation Plan; (iii) the specific controls and/or measures that are unmet, the steps to be taken and the time period required by the Supplier to achieve full compliance with the relevant BAE Systems Information Security Requirements; (iv) the Supplier's current level of compliance against the applicable BAE Systems Information Security Requirements (as a whole) and the expected level of compliance once the Implementation Plan has been fully implemented; and (v) any compensatory or equivalent measures that the Supplier has in place which appropriately mitigate the risks arising from any of the relevant BAE Systems Information Security Requirements not being met. The Purchaser shall consider the Implementation Plan and: either (a) approve it; or (b) where, in the Purchaser's sole opinion, the Implementation Plan is not acceptable to the Purchaser, the Parties shall agree any amendments, acting reasonably and in good faith, that are required in order for the Implementation Plan to be approved by the Purchaser and, in either case following any such approval, the Supplier shall work towards, and achieve, compliance by the date stated in the Implementation Plan.

- 7.3 Upon becoming aware of, or reasonably suspecting, an Information Security Incident, the Supplier shall notify the Purchaser of the same in accordance with the relevant BAE Systems Information Security Requirements.
- 7.4 At the request of the Purchaser, the Supplier shall (at no additional cost to the Purchaser) appoint an independent auditor to verify the Supplier's compliance with its obligations under this clause 7 **provided that** the Purchaser shall not be permitted to make more than 1 (one) request to the Supplier during any twelve (12) calendar month period unless the Supplier suffers an Information Security Incident. The independent auditor must possess the appropriate experience and qualifications, be selected in accordance with Good Industry Practice and be acceptable to the Purchaser. At the request of the Purchaser, the Supplier shall, within 10 (ten) Business Days of such request, provide the Purchaser with an audit certificate from such auditor and an annual SSAE 18 (SOC 2 Type 2) report along with all other material required under the relevant BAE Systems Information Security Requirements. Where any such audit report or material discloses any material findings of non-compliance by the auditor, the Supplier shall promptly remediate the issues raised to the satisfaction of the auditor.
- 7.5 The Supplier shall insert the substance of this Clause 7, including the BAE Systems Information Security Requirements in its agreements with any persons that the Supplier engages to deliver the Supplies.

## **8. EXPORT CONTROL**

- 8.1 The Supplier shall notify the Purchaser in writing at the time the Order is accepted if the Supplies (or any part thereof) are Controlled Material.
- 8.2 If the Supplies (or any part thereof) are Controlled Material:
- 8.2.1 the Supplier will provide a fully completed and signed Declaration Form when requested by the Purchaser and in any event no later than 30 (thirty) calendar days before delivery of any Controlled Material to the Purchaser; and
- 8.2.2 the provisions of Schedule 1 shall apply to and be incorporated into the Agreement (or shall be deemed to apply to and be incorporated into the Agreement from the date of the Agreement).
- 8.3 The Supplier shall:
- 8.3.1 immediately notify the Purchaser in writing in the event it become aware or there is reason to believe that any of the information provided in accordance with clauses 8.1 or 8.2.1 is inaccurate or has changed; and

8.3.2 respond promptly to any written request by the Purchaser to confirm or update any information provided in accordance with clauses 8.1 or 8.2.

- 8.4 Where the Supplier requires access to Purchaser Information that is Controlled Material and that requires export licences or other authorisations to enable such access by the Supplier, the Purchaser shall ensure that the Controlled Material is identified as such and that the required licences and/or other authorisations are in place. Unless otherwise agreed, all Supplies will be delivered to and performed in the UK and all Purchaser Information will be held by the Supplier in the UK.

## **SCHEDULE 1: EXPORT CONTROL**

### **1. EXPORT CONTROL**

- 1.1 The following definitions shall apply to this Schedule 1:
- 1.1.1 “EAR” means the US Department of Commerce’s Export Administration Regulations;
  - 1.1.2 “EAR Technology” has the meaning given to it in the EAR;
  - 1.1.3 “ITAR” means the US Department of State’s International Traffic in Arms Regulations;
  - 1.1.4 “ITAR Defense Article” has the meaning given to it in the ITAR;
  - 1.1.5 “ITAR Technical Data” has the meaning given to it in the ITAR;
  - 1.1.6 “FMS” means the US Government’s Foreign Military Sales programme authorised by the Arms Export Control Act; and
  - 1.1.7 “FMS Technology” means the equivalent of ITAR Technical Data but provided under FMS.
- 1.2 Each Party shall comply with all applicable import and export control laws and regulations in fulfilling the Agreement.
- 1.3 The Supplier shall provide all information and copies of any documents relating to the Supplies (or any part thereof) which the Purchaser reasonably requires to comply with all applicable import and export control laws and regulations.
- 1.4 The Supplier shall:
- 1.4.1 obtain all required export licences, agreements and other authorisations and comply with all associated registration and reporting obligations necessary to ensure delivery of the Supplies to the Purchaser, its end-user(s) and any foreign consignees, intermediate consignees, sub-licensees or freight forwarders in accordance with the delivery or performance dates required under the Agreement; and
  - 1.4.2 comply with all conditions relating to the export, re-export, transfer (including re-transfer) or use of Controlled Material contained within export licences, agreements and other authorisations.
- 1.5 If any of the Supplies (or any part thereof) are Controlled Material and are regulated under FMS or the ITAR or EAR (unless such are classified by the US exporter/manufacturer as EAR99 in which case the Supplier shall notify the Purchaser of this status in writing), the Supplier shall:

1.5.1 immediately after the Order is accepted, consult with the Purchaser about the relevant authorisations required from the appropriate US authorities and request information from the Purchaser which is necessary to make the Supplier's authorisation request to the US authorities 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; and

1.5.2 provide to the Purchaser the following further information and documentation in writing at the time the Order is accepted or no later than 30 (thirty) calendar days prior to the first agreed scheduled delivery or performance date: (a) details of the relevant US export 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 1.5.1, and any limitations/provisos; or (b) full copies of such US export 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 that are necessary for the Purchaser's compliance.

- 1.6 FMS Delivery. Unless the applicable regulations have been revised to require otherwise, for each item of FMS Controlled Material being delivered by the Supplier, the Supplier shall include as an integral part of the invoice and, in the case of FMS Technology, on the document itself: (a) the country of ultimate destination; (b) the end user; (c) the FMS case number or other approval number.

1.6.1 In respect of FMS Technology the following additional marking must be included on the cover sheet or document itself: "FMS Technology: US FOREIGN MILITARY SALES CONTROLLED DATA" This data is controlled for export, re-export and retransfer pursuant to 22 CFR 126.6(a). This information is authorized to the (i) country of ultimate destination: [insert]; (ii) end user(s): [insert]; (iii) under FMS case [insert case identifier]. The U.S. Government point of contact is [insert government point of contact], telephone [insert telephone number]."

- 1.7 ITAR Delivery. Unless the applicable regulations have been revised to require otherwise, for each ITAR Defense Article being delivered by the Supplier, the Supplier shall include as an integral part of the invoice and, in the case of ITAR Technical Data, on the document itself: (a) the country of ultimate destination; (b) the end user; (c) the license or other approval number or exemption citation; and (d) the Destination Control Statement required under the ITAR (i.e. 22 C.F.R. 123.9).

1.7.1 In respect of ITAR Technical Data the following additional marking must be included on the cover sheet or document itself: "EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and re-transfer is governed by the U.S. International Traffic in Arms Regulations (ITAR)".

1.7.2 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 the Purchaser with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.

- 1.8 EAR Delivery. Unless the applicable regulations have been revised to require otherwise, for each item of EAR Controlled Material being delivered by the Supplier, the Supplier shall include as an integral part of the invoice that accompanies the shipment, and, in the case of EAR Technology, on the EAR Technology itself: (a) the country of ultimate destination; (b) the end user; (c) the license or other approval number or exemption citation; and (d) the Destination Control Statement required under the EAR (i.e. 15 C.F.R. 758.6).

1.8.1 In respect of EAR Technology the following additional marking must be included on the cover sheet or document itself: "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)".

- 1.9 Where practical, the Supplier shall segregate deliveries of FMS, ITAR and EAR Controlled Material from other deliveries, and shall not mix FMS Controlled Material, ITAR Controlled Material or EAR Controlled Material on the same licences, agreements or authorisations unless permitted by US laws and regulations.
- 1.10 If engaged in the business of either exporting or manufacturing (whether exporting or not) ITAR Defence Articles or Defence Services (as defined in the ITAR 22 C.F.R 120.31 and 120.32 respectively), the Supplier shall maintain an effective export/import compliance program in accordance with the ITAR and, if located in the US, shall register with the US Department of State as required by the ITAR.
- 1.11 If engaged in brokering activities within the meaning of the ITAR (22 C.F.R. 129), the Supplier shall obtain and maintain registration with the US Department of State as required by the ITAR and shall obtain and maintain any necessary approval with respect to the Supplies.
- 1.12 If, in the performance of the Agreement, either Party is, or envisages being, engaged in trafficking and brokering activities under any jurisdiction, for example where Controlled Material is to be moved between two third countries, they shall inform the other Party insofar as those activities impose any legal obligations on the other Party. The Parties shall, in addition to any US brokering requirements, obtain and maintain the registrations and authorisations that are required under all applicable legislation.
- 1.13 The Supplier recognises and accepts that the Supplier and the Purchaser have disclosure requirements when making applications for the export, re-export, or retransfer of US defense articles or defense services subject to the ITAR Part 130. 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 (twenty) calendar days after receipt of such request, stating all necessary information required to comply with Part 130 of the ITAR.
- 1.14 The Supplier shall provide immediate written notification to the Purchaser in the event of any changes to information provided to the Purchaser under this Schedule 1 or any changes in circumstances affecting any licence or agreement, and shall respond promptly to any written inquiry made by the Purchaser seeking to confirm or update information in relation to the Supplier.
- 1.15 At the Purchaser's direction, the Supplier shall return or destroy all of the FMS Technology, 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 the Purchaser within 5 (five) Business Days of the destruction, and create and maintain the records required under FMS, the ITAR and/or EAR.