

## BAE SYSTEMS STANDARD CONDITIONS OF PURCHASE (2017 EDITION)

### 1. DEFINITIONS & INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply to the Order.

"Authorised Economic Operator"	means a company which holds a current authorisation, issued by its relevant tax authority, in recognition of a level of compliance set by that tax authority, in respect of the control of goods throughout the supply chain.
"AW Regulations"	means the Agency Workers Regulations 2010.
"BAE Systems Group"	means BAE Systems plc and any of its wholly-owned subsidiaries from time to time within the meaning of Section 1159 of the Companies Act 2006.
"Base Rate"	means, for the period 1 <sup>st</sup> January to 30 <sup>th</sup> June, the Bank of England base rate at the close of business on 31 <sup>st</sup> December of the previous year and, for the period 1 <sup>st</sup> July to 31 <sup>st</sup> December, the Bank of England base rate at the close of business on 30 <sup>th</sup> June of the same year.
"Business Day"	means a day (other than a Saturday or Sunday or a day on which the Purchaser's relevant site is closed due to a holiday) on which banks are open for business generally in London.
"CIS"	means the HMRC Construction Industry Scheme.
"Confidential Information"	means any and all confidential information, including without limitation any and all technical, financial, commercial or other information or trade secrets, (howsoever recorded, preserved or disclosed) disclosed by the Disclosing Party to the Receiving Party and either identified by a suitable legend or other marking as being confidential (or similar designation) in a prominent position or described as being confidential at the time of disclosure or which would reasonably be considered to be confidential having regard to all the circumstances of the disclosure; any information obtained by examination, testing or analysis in any way from such confidential information; and any derivative of any such confidential information <b>provided that</b> Confidential Information shall not include any information which the Receiving Party can show through documentary evidence: (a) is or becomes publicly available otherwise than as a result of a breach of the Order or the fault of the Receiving Party; (b) has been lawfully received from a third party without restriction as to its use or disclosure; (c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party; (d) was independently developed by or for the Receiving Party without making use of any Confidential Information; or (e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party, and, for the avoidance of doubt and without prejudice to the generality of the above, Confidential Information shall not be deemed to be publicly available merely because it may be derived from one or more items that are publicly available.
"Controlled Material"	means any of the Supplies which, are regulated by the ITAR, the EAR, the UK Export Control Order 2008, the EU Dual-Use Regulation, the Australian Customs Act 1901 or any other laws or regulations of any jurisdiction relating to import or export controls.
"Counterfeit Supplies"	mean (1) Supplies which have been identified, marked and/or altered by a source other than the Supplies' legally authorised source and which have been misrepresented to be an authorised item of the legally authorised source and/or (2) previously used Supplies provided as new.

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“Declaration Form”	means the Export Control Jurisdiction & Classification Declaration Form or any other form approved by BAE Systems plc’s Group General Counsel for the collection of jurisdiction and/or classification information from suppliers.
“Deduction”	means in accordance with the CIS rules, the amount that the Purchaser has to withhold on account of tax and Class 4 National Insurance contributions from a payment made to the Supplier.
“Disclosing Party”	means a Party which discloses any Confidential Information to the Receiving Party.
“EAR”	means the US Department of Commerce’s Export Administration Regulations. The EAR controls the export, re-export & transfer (in-country) of certain civil, dual use, and military items listed on the Commerce Control List or subject to the EAR.
“EAR Software”	means a collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression (Software is also addressed in the General Technology & Software Note (Supplement No. 2 to Part 774 of the EAR).
“EAR Technology”	means specific information necessary for the “development”, “production”, or “use” of a product. The information takes the form of “technical data” or “technical assistance”. Controlled “technology” is defined in the General Technology Note (Supplement No. 2 to Part 774) and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR). “Technology” also is specific information necessary for any of the following: operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, or other terms specified in Export Control Classification Numbers (ECCNs) on the Commerce Control List that control “technology”.
"Event of Default"	means an event specified as such in clause 14.2.
“Force Majeure Event”	means any circumstance not within a Party’s reasonable control including: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) terrorist attack, civil war, civil commotion or riots, war; (c) nuclear, chemical or biological contamination or sonic boom; and (d) any labour or trade dispute, strikes, industrial action or lock-outs or other industrial disputes (but only where it involves the workforce of a third party and does not involve a Party or a member of a Party’s group of companies or those of the Supplier’s agents or sub-contractors).
“HMRC”	means Her Majesty’s Revenue and Customs.
“Indemnified Party”	means the Purchaser and any member of the BAE Systems Group.
“Intellectual Property Rights”	mean (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) applications, extensions and renewals in relation to any of these rights; and (iv) all other rights of a similar nature or having an equivalent effect anywhere in the world.
“ITAR”	means the US Department of State’s International Traffic in Arms Regulations. The ITAR controls the export, re-export & retransfer of defense articles and defense services enumerated on the US Munitions List (USML) (ITAR Part 121) or specially designed parts, components, accessories, attachments or associated equipment and systems specially designed for items enumerated on the <u>USML</u> .
“ITAR Defense Articles”	means any item or technical data designated in the ITAR United States Munitions List (USML). This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly related to items designated in the USML. It does

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	not include basic marketing information on function or purpose or general system descriptions.
"ITAR Technical Data"	means information, other than software as defined in ITAR § 120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. Classified information relating to defense articles and defense services; Information covered by an invention secrecy order; Software as defined in § 121.8(f) of the ITAR directly related to defense articles. This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11 of the ITAR. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.
"Order"	means 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 shall be referenced in, apply to and be incorporated into it.
"Order Acknowledgement"	means the Purchaser's acceptance document issued with the Order or Order amendment for completion by the Supplier.
"Party"	means each of the Purchaser and the Supplier and includes their successors in title, permitted assignees and permitted transferees.
"Purchaser"	means the BAE Systems company identified on the Order having a place of business at the address for correspondence shown on the Order.
"Receiving Party"	means a Party which receives any Confidential Information from the Disclosing Party.
"Special Conditions"	mean the conditions set out or referenced on the Order (whether marked as Special Conditions or not).
"Specification"	means the document (if any) which sets out the agreed design, performance, functionality of and procedures for the Supplies and any training to be provided.
"Standard Conditions"	mean these BAE Systems Standard Conditions of Purchase (2017 Edition).
"Supplier"	means the supplier on which the Order is placed.
"Supplies"	mean any goods, materials, work, technical data, technology, software, technical assistance and/or services which are to be provided by the Supplier to the Purchaser pursuant to the Order.
"Termination Sum"	has the meaning given to it in clause 14.1.
"VAT"	means value added tax as provided for in the UK Value Added Tax Act 1994.

- 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 A reference to a statute, statutory provision or other legislation, whether of the UK or elsewhere, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

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### **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 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.
- 2.2 The Supplier shall accept the Order by signing and returning the Order Acknowledgement or, if trading through an e-commerce platform, by accepting the Order through the relevant process, when the contract shall be established. Alternatively, if the Supplier fails to do this, the Supplier shall be deemed to have accepted the Order as soon as it commences work.
- 2.3 Further to the Supplier's acceptance of the Order in accordance with clause 2.2, the Order shall constitute the contract between the Parties.
- 2.4 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.
- 2.5 In the event of any conflict, the following order of precedence shall apply:
- 2.5.1 the Special Conditions;
  - 2.5.2 these Standard Conditions;
  - 2.5.3 the Specification; and then
  - 2.5.4 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 obtain and maintain all necessary licences and consents and comply with all legislation, standards and regulations, including but not limited to, those relating to health, safety and environment, import and export and Registration Evaluation Authorisation and Restriction of Chemicals Regulations (REACH) which are relevant to any of the Supplies (and upon request provide appropriate evidence of such to the Purchaser);
  - 3.2.2 ensure that the Purchaser is advised, before receipt, of any Supplies which are intrinsically hazardous to life or harmful to the environment by providing in writing, all relevant health, safety and environmental data so that appropriate precautionary arrangements can be made and ensuring that the Purchaser is provided with all updates of such data;
  - 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 the relevant local authority (and, where applicable, credit the Purchaser with any relevant income arising from the surplus materials);
  - 3.2.4 comply with all the requirements of the Environmental Protection Act 1990 and any other applicable legislation governing the controlled tipping 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;

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- 3.2.6 notify the Purchaser if it is or when it becomes, or if it ceases to be, an Authorised Economic Operator; and
- 3.2.7 notify the Purchaser of any restrictions that apply in respect of EU customs legislation preventing the export, re-export or transfer of the Supplies by the Purchaser or, if requested by the Purchaser, confirm in writing that no such restrictions apply.
- 3.3 The Supplier shall ensure that all mobile computing devices including laptops, tablets, smartphones or their equivalent holding any information supplied or generated in respect of the Order be installed with and employ an acceptable industry standard full disk encryption solution and that all systems processing information in respect of the Order can provide:
  - 3.3.1 the current lists of authorised users;
  - 3.3.2 positive identification of all users at the start of each processing session;
  - 3.3.3 passwords with a minimum of eight (8) characters including numeric and “special” characters (if permitted by the system) as well as alphabetic characters;
  - 3.3.4 internal access controls to prevent unauthorised users from accessing or modifying the data;
  - 3.3.5 security accounting and audit measures to record: (A) (i) all log on attempts whether successful or failed, (ii) log off details (including time out where applicable), (iii) the creation, deletion or alteration of access rights and privileges and (iv) the creation, deletion or alteration of passwords; and (B) user ID, date, time and device ID;
  - 3.3.6 data backup with appropriately secured local and/or remote storage;
  - 3.3.7 anti-virus software of an acceptable industry standard maintained and updated in a timely manner;
  - 3.3.8 automatic logoff or locking requiring the input of a password in accordance with clause 3.3.3 to regain access if users’ terminals have been inactive for some pre-determined period of time; and
  - 3.3.9 firewall protection and appropriate rules if connected to the internet.
- 3.4 The Supplier shall, when requested, participate in the BAE Systems cyber security assessment process and shall make all reasonable efforts to put in place any remedial actions resulting from this.
- 3.5 If the Supplier is to process any Personal Data (as defined in the Data Protection Act 1998) on behalf of the Purchaser, the Supplier agrees that appropriate data protection clauses will be agreed between the Parties. In any event, the Supplier shall not under any circumstances transfer, or allow the transfer of, any Personal Data outside the European Economic Area unless previously authorised in writing to do so by the Purchaser.
- 3.6 For the purposes of checking the Supplier’s compliance with its obligations under the Order and upon reasonable notice, the Supplier shall provide the Purchaser and/or its representatives with access at any time during normal working hours to the Supplier’s and its agents’ and sub-contractors’ premises and permit the inspection of any document, system and/or information which is being used or made for the purposes of the Order.
- 3.7 The Supplier shall immediately notify the Purchaser of the occurrence of any event or conditions that might delay or prevent completion of any of its obligations under the Order, the reason for such delay and the measures being taken by it to rectify the situation.

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- 3.8 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 may make copies of the same at no charge.
- 3.9 If the Supplier sells, provides or utilises any materials in an electronic form or format (including e-mails and computer programs) for or in connection with the provision of Supplies under the Order, the Supplier shall use its best endeavours to 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.
- 3.10 The BAE Systems Group operates an Environmental Policy. The details of its Environmental Policy can be found at [www.baesystems.com](http://www.baesystems.com). It expects and encourages all its suppliers to embrace similar standards of its own and will work with them to share best practice and stimulate improved performance where needed.
- 3.11 Construction Industry Scheme:
- 3.11.1 CIS rules may apply to the provision of certain Supplies by the Supplier under the Order.
- 3.11.2 It will be the Supplier's responsibility to the Purchaser to assess the provision of each Supply for compliance with the CIS rules and to notify the Purchaser prior to providing the Supplies if the Supplies fall within the CIS scheme.
- 3.11.3 The Supplier shall ensure that it discloses the information required for the Purchaser to file returns with HMRC under the CIS rules. In particular, the Supplier shall ensure that all costs are identified and categorised correctly (with documentary evidence of those costs being provided to the Purchaser) to enable the Purchaser to file the necessary returns with HMRC. Where a Deduction is required under the CIS scheme the Purchaser shall deduct the appropriate amount from the Supplier's invoice prior to payment to the Supplier.
- 3.11.4 Should the Supplier fail to notify the Purchaser or present the correct information to the Purchaser as required under the CIS rules, the Supplier shall indemnify the Purchaser for any costs, penalties or fines incurred by the Purchaser to HMRC for any incorrect returns filed with HMRC, consequent to the Supplier's failure to act or the Supplier's negligence.

## **4. EXPORT CONTROL**

- 4.1 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 4.2.1 below) in fulfilling the Order and will provide all information about the Supplies, including where relevant information regarding constituent parts thereof, that may be necessary for the Purchaser's compliance with all applicable import and export control laws and regulations. The Supplier shall:
- 4.1.1 notify the Purchaser in writing at the time the Order is accepted, as well as when any changes occur or subsequent information is received by the Supplier to stipulate that the Supplies (or any part thereof) are subject to such controls;
- 4.1.2 in addition to the notification at clause 4.1.1 above, when requested by the Purchaser, provide documentation, in the form of a signed Declaration Form, certifying the jurisdiction and classification of Controlled Material. The Purchaser will provide the Supplier with a Declaration Form for completion which the Supplier will return to the Purchaser within 30 calendar days of the date of issue of the Order and in any event in advance of receipt by the Purchaser of such Controlled Material

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included in the Order. The Supplier is required to provide, amongst other things, the following types of information in the Declaration Form: (a) a description of the Controlled Material; (b) the name and address of the US exporter and/or manufacturer of all ITAR/EAR Controlled Material; (c) the part reference number for the Controlled Material; and (d) the ITAR US Munitions List category and paragraph number (and any special designation as Significant Military Equipment or Major Defense Equipment); the EAR Commerce Control List Export Control Classification Number (ECCN) (or other EAR designation); or the Military or Dual-Use List Classification Number and identification under UK, EU and Australian regulations; and

- 4.1.3 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.
- 4.2 If any of the Controlled Material, including any constituent part thereof, to be provided by or through the Supplier under the Order are controlled under the ITAR or EAR, (unless such are classified by the US exporter/manufacturer as EAR99 in which case the Supplier shall notify the Purchaser of this status in writing), the Supplier shall:
  - 4.2.1 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;
  - 4.2.2 immediately after the Order is accepted, consult with the Purchaser about the relevant authorisations required from the US Authorities and request from the Purchaser information necessary to make the Supplier's authorisation request complete and accurate, including, without limitation, full details of end use, end user(s), foreign consignees, intermediate consignees, sub-licensees and any other requirements such as information on dual or third country national employees, contract employees, location, or pre-existing company organisation authorisations which may be applicable;
  - 4.2.3 obtain all required US 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;
  - 4.2.4 provide the following further information and documentation in writing at the time the Order is accepted, if already secured or, if not, as soon as possible upon being secured: (a) details of the relevant licence, agreement or other authorisation (including details of any exemptions or exceptions) such details to include the reference numbers and dates, authorised parties and end use as specified in clause 4.2.2 above, and any limitations/provisos; or (b) full copies of such licences, agreements or other authorisations including any correspondence with the US Department of State or the US Department of Commerce consenting to or giving guidance on the use of exemptions or exceptions or listing limitations/provisos, including transmittal letters.
- 4.3 Copies of the licences, agreements or other authorisations or detailed summaries of these authorisations as required under clauses 4.1.3 and 4.2.4 must be provided to the Purchaser no later than thirty (30) days prior to the first agreed scheduled delivery date. Any commercially sensitive information contained within licences or agreements may be deleted providing it does not prevent identification of the scope of the authorisation, including any relevant constraint; any provisos and conditions; the end users or the parties and/or consignees.
- 4.4 **ITAR Delivery.** Unless the applicable regulations (i.e. 22 C.F.R. 123.9) have been revised to require otherwise, for each ITAR Defense Article being delivered by the Supplier, the following

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information contained in clauses 4.4.1 to 4.4.3, respectively shall be included as an integral part of the commercial invoice and, in the case of ITAR Technical Data, on the document itself:

- 4.4.1 In respect of **ITAR Defense Articles**, information which identifies: (i) the country of ultimate destination; (ii) the end user; (iii) the license or other approval number or exemption citation; and (iv) the following Destination Control Statement: "These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations".
- 4.4.2 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.
- 4.4.3 In respect of **ITAR Technical Data**, this data should be marked as follows: "**EXPORT CONTROLLED DATA:** This document contains technical information and the export, re-export and retransfer is governed by the U.S. International Traffic in Arms Regulations (ITAR) and 'This item is controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. It may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in its original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.'" In addition, this marking legend should be supplemented with the following information, either on the document itself, or on an accompanying coversheet or document: "This information is authorized to the (i) country of ultimate destination: [●]; (ii) end user(s): [●]; (iii) pursuant to license or other approval number or exemption citation: [●]."
- 4.5 **EAR Delivery.** Unless the applicable regulations (i.e. 15 C.F.R. 758.6) have been revised to require otherwise, for each item of EAR Controlled Material being delivered by the Supplier, the following Destination Control Statement shall be included as an integral part of the commercial invoice that accompanies the shipment, and, in the case of EAR Technology, on the EAR Technology itself:
- 4.5.1 In respect of **EAR Items**: "These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations." In addition, the Supplier must also provide the licence number(s) or license exception utilised and the ECCN for all 9x515 or 600 series items being exported, re-exported or transferred (in-country).
- 4.5.2 In respect of **EAR Technology**: "**EXPORT CONTROLLED DATA:** This document contains technical information and the export, re-export and transfer (in-country) is governed by the U.S. Export Administration Regulations (EAR) and 'This item is controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. It may not be resold, transferred, or otherwise disposed of, to any other



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country or to any person other than the authorized ultimate consignee or end-user(s), either in its original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.” In addition, this marking legend should be supplemented with the following information, either on the document itself, or on an accompanying coversheet or document: “This information is authorized to the (i) country of ultimate destination: [●]; (ii) end user(s): [●]; (iii) pursuant to license or other approval number or license exception citation: [●].”

- 4.6 Any outer package containing the Controlled Material should be marked/labelled with an Export Control statement as described in clauses 4.4 and 4.5 above as appropriate to the nature, size, packaging, etc of the item.
- 4.7 Where practical, the Supplier shall segregate deliveries of ITAR or EAR Controlled Material from other deliveries, and shall not mix ITAR Controlled Material with EAR Controlled Material on the same licences, agreements or authorisations unless permitted by US laws and regulations pursuant to Export Control Reform.
- 4.8 Without limiting the foregoing, the Supplier shall only use Controlled Material in accordance with the licensed authorisation. The Supplier shall only use ITAR Technical Data or EAR Technology received from 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 Material, to include transfer to any individual, company or organisation (including lower-tier sub-contractors), without the authority of a US Government export licence, agreement, or other authorisation, such as an applicable licence exemption or exception. The Supplier will strictly comply with the conditions in any such approval and in the export licence or other Government authorisation for such disclosure. The restrictions on the transfer of export controlled data apply equally to 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 or EAR. 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. Technical Data exported from the United States may not be transferred to another person except pursuant to specific provisions in the regulations (such as ITAR 22 C.F.R 126.18), as specifically authorised in a license or agreement (e.g. pursuant to a non-disclosure agreement (NDA) in the case of sub-licensees), or where prior written approval of the Department of State has been obtained.
- 4.9 The Supplier hereby authorises the Purchaser to disclose any and all Confidential Information to government authorities with jurisdiction over such Confidential Information as may be reasonably necessary for the purpose of disclosing, resolving or remediating any violation or potential violation of applicable export control laws or regulations, as provided in clause 17.1.2.
- 4.10 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.
- 4.11 If engaged in the business of either exporting or manufacturing (whether exporting or not) US defence articles or defence services (as defined in the ITAR 22 C.F.R 120.6 and 120.9 respectively), the Supplier represents and warrants that it maintains an effective export/import compliance program in accordance with the ITAR and, if located in the US, that it is registered with the US Department of State as required by the ITAR.
- 4.12 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

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the ITAR and has obtained any necessary approval with respect to the Supplies provided in the Order.

- 4.13 If US defense articles or defense services subject to the ITAR form a part of the Order, the Supplier recognises and accepts that the Supplier and the Purchaser have disclosure requirements when making applications for the export, re-export, or retransfer of US defense articles or defense services valued in an amount of US\$500,000 or more, which are being sold commercially or as a result of a contract with the US Department of Defense to or for the use of the armed forces of a non-U.S. country or international organisation, and for which disclosure requirements relate to the payment of any political contribution, fee or commission, directly or indirectly, whether in cash or in kind, to or at the direction of any person in order to solicit, promote or otherwise to secure the Order or any related orders. In this context, when requested to do so by 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:
- 4.13.1 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 US\$1,000 or more to or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; or (ii) any fee or commission, including any loan, gift, donation or other payment of US\$1,000 or more; and
  - 4.13.2 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
  - 4.13.3 the Supplier shall notify the Purchaser immediately if the circumstances described in clauses 4.13.1 or 4.13.2 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 4.13.
- 4.14 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.
- 4.15 At the Purchaser's direction, the Supplier shall return, or destroy all of the ITAR Technical Data and/or EAR Technology or other Controlled Material exported to the Supplier pursuant to the Order upon fulfilment of its terms, send written confirmation of the destruction to the Purchaser within five (5) working days of the destruction, and create and maintain the records required under the ITAR and EAR.
- 4.16 The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with any breach by the Supplier, its employees, agents or sub-contractors of this clause 4.
- 5. SUPPLIER'S PERSONNEL**
- 5.1 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.

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- 5.2 The Supplier shall ensure that its employees, agents and sub-contractors have appropriate qualifications, training and expertise and that they are made aware of and comply with the security classification of any information relating to the Supplies (including, if applicable, under the Official Secrets Acts 1911 to 1989).
- 5.3 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 Purchaser's customer's or a BAE Systems Group site) are cleared in accordance with the relevant security and export control procedures, including where applicable those relating to access to US export controlled material or information. In the event that any such employees, agents and sub-contractors are not security and export cleared, the Purchaser shall promptly notify the Supplier and the Supplier shall use all reasonable endeavours to replace such a person. The Purchaser does not guarantee that any person will satisfy the necessary clearance requirements, either at all or by a given time, and accordingly shall not be liable to the Supplier if clearance is delayed or declined.
- 5.4 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 Purchaser's customer's or a BAE Systems Group site):
- 5.4.1 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 national security requirements). Copies of these will be provided upon request by the relevant site security manager or in the case of export controlled material or information, by the relevant Chief Counsel;
  - 5.4.2 shall not without the Purchaser's prior written consent use any of the Purchaser's (or the Purchaser's customer's or a BAE Systems Group) site equipment or services;
  - 5.4.3 permit the relevant site security personnel to stop and search them and any of their vehicles when entering or leaving the site and to also search any of their huts, toolboxes or other equipment or property on the site at any time; and
  - 5.4.4 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 the site's IT network.
- 5.5 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).
- 5.6 The Purchaser shall have the right to refuse access to its site to any of the Supplier's employees, agents and sub-contractors who in the opinion of the Purchaser 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 does refuse access to its site, specifying the reasons for such refusal.
- 5.7 The Supplier warrants and undertakes that for the purposes of the AW Regulations, none of the Supplier's employees, agents or sub-contractors are acting in the capacity of an Agency Worker (as defined in the AW Regulations). Accordingly, the Supplier warrants that none of its employees, agents or sub-contractors shall assert any claim for equal treatment against the Purchaser under the AW Regulations. In the event of any such assertion or claim, the Supplier shall indemnify the Purchaser on demand for any claim or costs (including legal costs) incurred by or awarded against the Purchaser in respect of any claim or allegation by the Supplier's employee, agent or sub-contractor.

## **6. QUALITY**

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- 6.1 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 in the Purchaser's quality approval/authority issued to the Supplier.
- 6.2 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 Purchaser's customer:
- 6.2.1 allow the Purchaser and persons authorised by the Purchaser (which may include the Purchaser's customer) access to the Supplier's premises (and those of its agents and sub-contractors) that are being used to carry out work on the Supplies in order to inspect and audit the facilities, processes and procedures used in manufacturing and providing the Supplies;
  - 6.2.2 provide adequate data to the Purchaser relating to progress of work on the Supplies and their quality; and
  - 6.2.3 provide all necessary assistance (including, where appropriate, access to office accommodation, telephone and fax facilities and high speed internet connection) to enable the above-referenced rights to be fully exercisable.
- 6.3 Unless otherwise specifically agreed in writing, all Supplies shall be new.

### **7. DELIVERY**

- 7.1 The delivery term in respect of any Supplies shall be DAP (Incoterms 2010).
- 7.2 All Supplies must be properly and securely packed.
- 7.3 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.
- 7.4 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.
- 7.5 If the Supplier fails to comply with the provisions of this clause 7, the Purchaser shall be under no obligation to accept delivery of the relevant consignment.

### **8. ACCEPTANCE**

- 8.1 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.
- 8.2 Where no acceptance tests are set out as a Special Condition 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 7.
- 8.3 If the Purchaser is not satisfied that the Supplies are delivered in accordance with the Order, the Purchaser may in its absolute discretion:
- 8.3.1 reject them in whole or in part; and/or

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

### 9. RISK & TITLE

- 9.1 Risk in any Supplies shall pass to the Purchaser upon delivery in accordance with clause 7.
- 9.2 Title to any Supplies shall pass to the Purchaser upon acceptance in accordance with clause 8.

### 10. PRICE & PAYMENT

- 10.1 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 25.
- 10.2 Prices shall be non-revisable and shall be exclusive of VAT and, in the case of non-EU Supplies, exclusive of import taxes.
- 10.3 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.
- 10.4 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.
- 10.5 Prices shall be payable by the Purchaser to the Supplier in accordance with the provisions of this clause 10. The Purchaser is a signatory to the Prompt Payment Code.
- 10.6 The Supplier shall submit to the Purchaser on or after the provision of the Supplies an invoice in respect of the Supplies properly provided. Each correctly submitted and, where applicable, valid VAT invoice shall become due for payment at the end of the month following the month in which the invoice is issued **provided that** the Supplies have been delivered by the Supplier and accepted by the Purchaser in accordance with clauses 7 and 8 respectively.
- 10.7 Each invoice must be clearly addressed to the legal entity of the Purchaser and sent to (separately from any Supplies) c/o Accounts Payable Department as specified on the Order, referencing the Order number with respect to the Supplies together with the delivery advice note number and date.
- 10.8 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 10. Should any invoice contain incomplete or incorrect 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 month following the month in which the invoice is resubmitted) or request the Supplier to issue a credit note to correct the error.
- 10.9 Payments to the Supplier shall be made by the Purchaser in Pounds Sterling (or the agreed currency of the Order) by Bankers Automated Clearing System (BACS) or equivalent Electronic Funds Transfer (EFT) or any established standing order.
- 10.10 Where the Purchaser is required to deduct withholding tax from its payment to the Supplier, it will deduct the minimum required by law and pay this to its tax authority within the statutory time limit. As soon as reasonably practicable, the Purchaser will provide evidence reasonably satisfactory to the Supplier that the tax deduction has been made and payment made to the relevant taxing authority.

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- 10.11 Without prejudice to any other right or remedy the Purchaser may have, the Purchaser shall be entitled to set-off 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.
- 10.12 The Supplier reserves the right to charge interest on all valid overdue amounts at the rate of four per cent (4%) per annum above the Base Rate, such interest accruing from the first day on which the payment is overdue until payment has been received by the Supplier.
- 10.13 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 the provision of the UK Value Added Tax Act 1994 or under any other relevant legislation.

### 11. WARRANTY

- 11.1 The Supplier warrants to the Purchaser that the Supplies shall be provided:
- 11.1.1 in accordance with the terms of the Order;
  - 11.1.2 fit for the purpose for which they are intended;
  - 11.1.3 free from defects (whether actual or latent) in design, materials and workmanship;
  - 11.1.4 with reasonable care and skill;
  - 11.1.5 in accordance with generally recognised commercial practices and standards in the industry; and
  - 11.1.6 in compliance with all applicable laws and regulations as well as all of the Purchaser's site (or, if applicable, the Purchaser's customer's or a BAE Systems Group site) policies and rules.
- 11.2 The warranties in clause 11.1 shall, in respect of each of the Supplies, continue for twelve (12) calendar months from the date of acceptance of the relevant Supplies in accordance with clause 8.
- 11.3 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:
- 11.3.1 refund the Purchaser the price of the defective Supplies; and/or
  - 11.3.2 repair or replace the defective Supplies 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.
- 11.4 The Supplier agrees that all warranties attaching to the Supplies shall be capable of being assigned to a customer of the Purchaser or other user by the Purchaser without prior written notice to the Supplier.
- 11.5 The provisions of this clause 11 shall survive termination of the Order, howsoever arising.

### 12. INDEMNITY

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- 12.1 The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever suffered or incurred by an Indemnified Party arising out of or in connection with any claim made against any of the Indemnified Parties by a third party:
- 12.1.1 arising out of or in connection with the provision of the Supplies, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Order by the Supplier, its employees, agents or sub-contractors; and
  - 12.1.2 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.
- 12.2 Any indemnity provided by the Supplier under the Order shall not cover an Indemnified Party to the extent that a claim under it results solely and directly from the negligence or wilful misconduct of that Indemnified Party.
- 12.3 Nothing shall restrict or limit each Indemnified Party's 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 Supplier under the Order.
- 12.4 The provisions of this clause 12 shall survive termination of the Order, howsoever arising.

### **13. INSURANCE**

- 13.1 The Supplier shall, as a minimum, maintain the following primary insurance policies at the specified amount (unless the Purchaser has specified some other sum) 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 12:
- 13.1.1 a policy of Public Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Purchaser, BAE Systems Group, customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;
  - 13.1.2 a policy of Product Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Purchaser, BAE Systems Group, customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;
  - 13.1.3 where applicable, a policy of Professional Indemnity Insurance for an amount not less than £5 million per event or series of events;
  - 13.1.4 where applicable, a policy of Aviation Products Liability Insurance and/or a policy of Aviation Liability Insurance, each for an amount not less than £100 million per event or series of events;
  - 13.1.5 where applicable, a policy of Marine Insurance for an amount not less than £10 million; and
  - 13.1.6 any other insurance which the Supplier may be statutorily required to maintain.
- 13.2 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 (and

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shall make the Purchaser aware of any conditions, limitations, exclusions or restrictions within such insurance policies).

- 13.3 The Purchaser shall have the full benefit of such policies detailed in this clause 13 and, where applicable, the Order shall invoke any "indemnity to principals" clauses within the Supplier's liability insurance policies.
- 13.4 The Supplier shall notify its insurance companies if it is required to provide some of the Supplies on the Purchaser's site (or the Purchaser's customer's or a BAE Systems Group 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 (but in any event for an amount not less than £10 million per event or series of events).
- 13.5 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 Purchaser's customer's or a BAE Systems Group site) except to the extent that it is caused by the Purchaser's negligence.

### 14. TERMINATION, EVENTS OF DEFAULT & REMEDIES

- 14.1 The Purchaser may at any time terminate the Order for convenience upon giving the Supplier written notice **provided that** in such case the Purchaser agrees that it will reimburse the Supplier for any costs which the Supplier can prove it has reasonably and properly incurred as a direct consequence of such an early termination which shall represent full and final settlement of such early termination (the "Termination Sum"). The Supplier shall submit invoices to the Purchaser (which shall comply with the provisions of clause 10) for each Termination Sum and any outstanding sums due under the Order. This provision shall apply regardless of the reason for termination and whether or not clause 29.3 has been invoked.
- 14.2 Each of the following events is an Event of Default:
- 14.2.1 the Supplier fails to comply with any of its obligations under the Order and, if that default is capable of remedy, the Supplier fails to cure that default within thirty (30) days of the Purchaser giving written notice to it requiring remedy; or
- 14.2.2 the Supplier is unable to pay its debts generally as they fall due; or
- 14.2.3 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
- 14.2.4 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
- 14.2.5 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 paid out or discharged within thirty (30) days after such appointment, taking possession or levy; or
- 14.2.6 there occurs, in relation to the Supplier, in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets are subject, any event which corresponds in that country or territory with any of those mentioned in clauses 14.2.2 to 14.2.5 inclusive (subject to the same thresholds, grace periods and exceptions); or



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- 14.2.7 the Supplier is acquired by or merged with any third party or any change of control occurs; or
- 14.2.8 the Supplier is or may be unable, in the Purchaser's reasonable opinion, to perform its obligations under the Order.
- 14.3 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:
  - 14.3.1 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;
  - 14.3.2 to recover such damages as it may have sustained in connection with or as a result of such Event of Default; and/or
  - 14.3.3 to terminate the Order in whole or in part.
- 14.4 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.
- 14.5 Upon receipt of notice of termination of the Order, the Supplier shall:
  - 14.5.1 cease provision of the Supplies as directed by the Purchaser; and
  - 14.5.2 minimise all its costs associated with the termination of the Order.
- 14.6 Termination of the Order shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive or which implicitly survives termination.
- 14.7 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.

### 15. FORCE MAJEURE EVENT

- 15.1 Neither Party shall be deemed in breach of the Order or liable to the other for delay in performing its obligations, or failure to perform any such obligations, under the Order, if the delay or failure results from a Force Majeure Event **provided that** the affected Party:
  - 15.1.1 promptly notifies the other Party, in writing, of the known or anticipated event which causes or may cause it;
  - 15.1.2 produces reasonable evidence of its occurrence;
  - 15.1.3 uses all reasonable endeavours to eliminate or minimise the delay and continues to fulfil its obligations to the extent that they are not affected by the Force Majeure Event;
  - 15.1.4 recommences its full performance as soon as is reasonably possible following its cessation; and
  - 15.1.5 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.
- 15.2 A Party cannot claim relief under this clause 15 if the Force Majeure Event is one where a reasonable party should have foreseen and provided for the event in question or if it is

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attributable to a failure by the Party to either comply with the provisions of its business continuity plan or to have a business continuity plan in place.

- 15.3 If a Party is affected by a Force Majeure Event, it will use its reasonable endeavours to mitigate its effect. Neither Party will be entitled to any payment from the other for any costs or expenses incurred as a result of it.
- 15.4 If a Force Majeure Event 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.

### 16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Where any foreground Intellectual Property Rights are created as a result of the work undertaken by the Supplier, its agents or sub-contractors for the Order, the Supplier agrees that it shall vest in and be the absolute property of the Purchaser. Consequently, the Supplier assigns or shall procure the assignment to the Purchaser, with full title guarantee and free from all third party rights, the foreground 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 foreground Intellectual Property Rights in the name of the Purchaser or its nominee, such acts to include (without limitation) the execution of documents.
- 16.2 Any background Intellectual Property Rights created by the Supplier prior to the commencement of the Order and/or outside of the Supplies provided to the Purchaser under the Order shall remain vested in and be the absolute property of the Supplier **provided that** if they are included in any Supplies they must be clearly and legibly marked by the Supplier and the Supplier hereby grants to the Purchaser for use as necessary with the foreground Intellectual Property Rights an irrevocable, perpetual, non-exclusive, worldwide, royalty-free licence (with the ability to sub-licence) in respect of them.
- 16.3 The Supplier represents and warrants to the Purchaser that the Supplies and anything done by and any use by the Purchaser in relation to the Supplies will not infringe any Intellectual Property Rights of a third party.
- 16.4 The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses or damages, payments and royalties of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with the infringement or alleged infringement of any Intellectual Property Rights owned or controlled by a third party in respect of the Supplies.

### 17. CONFIDENTIALITY

- 17.1 The Receiving Party undertakes:
- 17.1.1 only to use, or allow to be used, any Confidential Information to the extent reasonably necessary for the purpose of the Order and not to use any Confidential Information, or allow it to be used, for any other purpose except with the prior written consent of the Disclosing Party;
- 17.1.2 to keep any Confidential Information confidential and not copy or disclose it to any person or party except as permitted under the Order, save that the Receiving Party may disclose Confidential Information where required by law, court order or any government or regulatory body **provided that** the Receiving Party will, where possible without breaching any legal or regulatory requirements, give the Disclosing Party advance notice of the disclosure requirement and will co-operate with the Disclosing Party in seeking to oppose, minimise or obtain confidential treatment of the requested disclosure to the extent reasonably practicable;

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- 17.1.3 only to disclose any Confidential Information to its directors, persons employed in or by its business, its professional advisers or (in the case of the Purchaser) any member of the BAE Systems Group, in each case, which need-to-know such Confidential Information for the purpose of the Order **provided that** the Receiving Party shall make each such person or party agree to observe terms no less stringent than those contained in this clause 17 and the Receiving Party shall be responsible for such person or party's compliance;
  - 17.1.4 not to disclose any Confidential Information to any third party (other than as permitted under the Order) except as required for the purpose of the Order and with the prior written consent of the Disclosing Party **provided that** the Receiving Party procures such third party's written undertaking to the Disclosing Party to observe terms no less stringent than those contained in this clause 17;
  - 17.1.5 not to copy, reproduce or reduce to writing any Confidential Information, or any part thereof, or allow any person or party receiving such Confidential Information from the Receiving Party to do so, except as is reasonably necessary for the purpose of the Order;
  - 17.1.6 to establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised use, reproduction, disclosure or access (such measures being at least equivalent to those it applies for the protection of its own Confidential Information); and
  - 17.1.7 to notify the Disclosing Party as soon as reasonably practicable if it becomes aware of, or reasonably suspects, any loss or actual compromise of any Confidential Information or the possession, use or knowledge of any Confidential Information by a third party other than in accordance with the terms of this clause 17.
- 17.2 On expiry or termination of the Order:
- 17.2.1 the Receiving Party shall on written demand by the Disclosing Party: (a) return to the Disclosing Party any Confidential Information (and any copies thereof) reduced to any permanent form disclosed by the Disclosing Party under the Order; (b) take all reasonable steps to permanently delete all electronic copies of Confidential Information from any computer systems, save that the Receiving Party shall not be obliged to erase Confidential Information held in any archived computer system in accordance with its security and/or disaster recovery procedures; and (c) provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations in this clause 17.2.1 have been complied with;
  - 17.2.2 if the Disclosing Party has not made a demand under clause 17.2.1 within three (3) calendar months of expiry or termination, the Receiving Party may destroy, erase or procure the destruction or erasure of, such Confidential Information (and any copies thereof) in accordance with its usual business practices; and
  - 17.2.3 the Receiving Party shall make no further use of the Confidential Information, save that the Receiving Party may retain one (1) copy of any Confidential Information solely for the purpose of enabling it to comply with the provisions of the Order or for legal or regulatory purposes.
- 17.3 The provisions of this clause 17 shall survive termination of the Order, howsoever arising.

## **18. COUNTERFEIT SUPPLIES**

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- 18.1 The Supplier shall ensure that Supplies are in-line with the requirement for a conforming product and Counterfeit Supplies are not delivered to the Purchaser.
- 18.2 Should the Supplier become aware of or suspect that it has acquired Counterfeit Supplies, the Supplier shall as soon as practicable notify the Purchaser using existing Non-Conforming / Escapes / Alerts Notification Processes. The Supplier shall provide documentation that authenticates the affected Supplies and, where applicable, provide traceability of the sourcing route. The Supplier shall support the Purchaser in any investigation to support resolution of any suspect or affected Counterfeit Supplies.
- 18.3 In the event that Supplies delivered under the Order constitute or include Counterfeit Supplies, the Supplier shall, at its expense promptly replace such Counterfeit Supplies with genuine Supplies conforming to the requirements of the Order.
- 18.4 Notwithstanding any other provision in the Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Supplies, including without limitation the Purchaser's costs of removing Counterfeit Supplies, of reinserting replacement Supplies and of any testing necessitated by the reinstallation of Supplies after Counterfeit Supplies have been exchanged.

### **19. OFFSET**

- 19.1 The Supplier understands that the Purchaser and other companies within the BAE Systems Group and associated companies of BAE Systems plc accrue significant offset obligations resulting from international sales. To assist in satisfying these obligations, the Purchaser may wish to take advantage of the Supplier's offshore supply chain and investment activity, in order that potential offset credits can be claimed in identified target markets.
- 19.2 The Supplier acknowledges that companies within the BAE Systems Group and associated companies thereof may be entitled to utilise through the Purchaser the total value of the Order and any sub-contracts placed by the Supplier arising from the Order, as fulfilment in whole or in part of any offset obligation placed, or to be placed, upon a company in the BAE Systems Group or an associated company thereof by an overseas customer.
- 19.3 The Supplier shall first seek and obtain the Purchaser's written permission prior to using the Order and/or any sub-contracts arising from the Order in satisfaction of the Supplier's own or any of the Supplier's other customers' offset obligations.
- 19.4 On request by the Purchaser, the Supplier shall assist the relevant company in registering the Order with the appropriate bodies as a satisfactory offset.
- 19.5 If the offset involves activities by US persons wherever located or by non-US persons located in the US to facilitate the manufacture, export, permanent import, transfer, re-export, or re-transfer of US or foreign defense articles or defense services, the Supplier and the Purchaser shall consult on the applicability of any ITAR brokering requirements and each, as may be appropriate given the nature of the offset transaction, shall timely seek any necessary ITAR registration and licensing authorisation.

### **20. INDUCEMENTS & ETHICS**

- 20.1 Whether acting alone or with others, the Supplier undertakes that it will not do, and warrants that prior to accepting the Order it has not done, any of the following:
- 20.1.1 induce an employee, agent or sub-contractor of the Purchaser to make any concession to or confer any benefit on the Supplier, refrain or withhold from doing any act or alter any of the requirements of the Order in return for any gift, money, benefit or other inducement; nor

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- 20.1.2 without the prior written consent of the Purchaser, pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Order or any transaction related thereto; nor
- 20.1.3 encourage or facilitate an employee, agent or sub-contractor of the Purchaser to commit any act of dishonesty against the Purchaser which may benefit the employee, agent or sub-contractor of the Purchaser or be a detriment to the Purchaser, or both.
- 20.2 The BAE Systems Group maintains an ethics and compliance programme that includes a written code of conduct, training and awareness for all employees, details of which can be found at [www.baesystems.com](http://www.baesystems.com). The BAE Systems Group expects and encourages all its suppliers to embrace ethical values and legal compliance practices of a comparable standard (including a method for reporting possible violations). The Supplier undertakes that it will abide by and comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including the UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977.
- 20.3 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).

### **21. PUBLICITY**

The Supplier shall not publicise in any media or public announcement information regarding the terms of the Order or the Supplies provided or use "BAE Systems" or derivatives of the company name as part of any publicly available URL without the prior written consent of the Purchaser.

### **22. NOTICES**

- 22.1 Any notice under the Order sent by one Party to the other shall be in writing and shall be sent by first class post using special delivery or recorded delivery to its address set out in the Order or to such other address as may from time to time be notified by the one to the other and shall be deemed to be delivered two (2) Business Days after posting it from and to an address in the United Kingdom and seven (7) Business Days from the date of posting it from or to an address elsewhere. E-mail or facsimile transmissions will not be an acceptable means of sending notices.
- 22.2 Unless otherwise agreed, all notices and correspondence under or in respect of the Order shall be in the English language.

### **23. 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.

### **24. 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.

### **25. AMENDMENT**

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No amendment to the Order shall be valid unless it is contained in an Order amendment issued by the Purchaser which the Supplier shall accept by signing and returning the Order Acknowledgement or, if trading through an e-commerce platform, by accepting the Order Acknowledgement through the relevant process (or, if the Supplier fails to sign and return the Order Acknowledgement, it shall be deemed to have been accepted by carrying out the work which reflects the amendment).

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

- 26.1 Subject to Clause 11.4, neither Party may assign or transfer all or any of its rights and/or obligations under the Order without the prior written consent of the other Party **provided that** the Purchaser may do so to another member of the BAE Systems Group.
- 26.2 The Supplier may not sub-contract any of its obligations under the Order without the prior written consent of the Purchaser. Notwithstanding any such sub-contracting, the Supplier shall remain wholly liable to the Purchaser for all obligations under the Order.

### **27. ENTIRE AGREEMENT**

The Order is the only and 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. Each of the Parties acknowledges that, in entering into the Order, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in the Order) and waives all rights and remedies which might otherwise be available to it in respect thereof, provided always that nothing in this clause limits or excludes any liability for fraud.

### **28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Except for any Indemnified Party, a third party which is not a Party to the Order has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Order but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### **29. LAW & JURISDICTION**

- 29.1 The Order, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.
- 29.2 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 amicably.
- 29.3 Subject to the provisions of clause 29.2, the Parties agree that any dispute arising out of or in connection with the Order, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with the Order, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat or legal place of arbitration shall be London. The language to be used in the arbitration shall be English.