

**LOCKHEED MARTIN – UNITED KINGDOM**

**CORPDOC 21UK**

**SUBCONTRACTS/PURCHASE ORDERS IN SUPPORT OF UNITED KINGDOM  
MINISTRY OF DEFENCE (MOD) PRIME CONTRACTS**

**SECTION I: STANDARD PROVISIONS**

**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) Unless expressly accepted in writing by LOCKHEED MARTIN, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are rejected by LOCKHEED MARTIN and have no effect.

**2. APPLICABLE LAWS**

- (a) This Contract shall be governed by and interpreted in accordance with the laws of England. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply to this Contract.
- (b) SELLER, in the performance of this Contract, agrees to comply at all times with all applicable laws including without limitation common law, statute, regulation, directive, rule, order or delegated legislation of any other requirement of any local state or European Union (EU) body, in relation to the Work. SELLER shall at it's own expense procure all licenses consents, registrations and permits necessary to perform this Contract and furnish the Work and shall ensure that all such permissions are valid and subsisting and that all conditions (whether express or implied) are at all times complied with.

**3. ASSIGNMENT/SUBCONTRACTS**

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by LOCKHEED MARTIN. Seller shall be responsible for all Work performed/supplied by sub-contractors under this Contract.

**4. CHANGES**

- (a) The LOCKHEED MARTIN Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, LOCKHEED MARTIN shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) SELLER must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from LOCKHEED MARTIN. If the SELLER's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, LOCKHEED MARTIN shall have the right to prescribe the manner of disposition of the property.

(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

## 5. CONTRACT DIRECTION

(a) Only the LOCKHEED MARTIN Procurement Representative has authority on behalf of LOCKHEED MARTIN to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be in writing and sent to the LOCKHEED MARTIN Procurement Representative.

## 6. COUNTERFEIT WORK

(a) For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.

(b) SELLER agrees and shall ensure that Counterfeit Work is not delivered to LOCKHEED MARTIN.

(c) SELLER shall only purchase products to be delivered or incorporated as Work to LOCKHEED MARTIN directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by LOCKHEED MARTIN.

(d) SELLER shall immediately notify LOCKHEED MARTIN with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit Work. When requested by LOCKHEED MARTIN, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

(e) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation LOCKHEED MARTIN's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies LOCKHEED MARTIN may have at law, equity or under other provisions of this Contract.

(f) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.

(g) SELLER shall include paragraphs (a) through (d) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to LOCKHEED MARTIN.

## **7. DATA PROTECTION ACT**

As used herein, "Personal Data" and "Data Controller" have the meanings attributed to them in the Data Protection Act 1998. SELLER shall, with respect to all Personal Data furnished by LOCKHEED MARTIN to SELLER or otherwise acquired by SELLER in the performance of this Contract, comply strictly with all requirements of the Data Protection Act 1998 as if it were the Data Controller of such personal data.

## **8. DEFAULT**

(a) In the event that SELLER: (1) becomes bankrupt or insolvent, makes an arrangement with its creditors, has a receiver appointed over any of its assets or commences to be wound-up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction); or (2) fails to perform or observe any of the conditions of this Contract and fails to remedy the same within ten (10) days after receipt of notice from LOCKHEED MARTIN requiring the same to be remedied, then LOCKHEED MARTIN may by written notice to SELLER forthwith terminate this Contract or any specified part thereof.

(b) Upon termination, and with respect to that part of this Contract terminated: (1) no further sums shall become due to SELLER save in respect to Work delivered and accepted prior to termination, payment for which shall be postponed at LOCKHEED MARTIN's election, until such time as LOCKHEED MARTIN's claims against SELLER under this Contract shall have been finally established and quantified, and (2) LOCKHEED MARTIN shall be entitled to procure from any alternative source the supply of Work in replacement of Work not delivered prior to the termination. Any additional costs incurred by LOCKHEED MARTIN in finding and arranging such alternative source shall be sums due and owing by SELLER to LOCKHEED MARTIN.

(c) The provisions of this clause shall be without prejudice to any other remedy LOCKHEED MARTIN may have under this Contract or any applicable law.

## **9. DEFINITIONS**

(a) The following terms shall have the meanings set forth below:

(1) "the Authority" means the Secretary of State for Defence.

(2) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract" "Task Order", or other such type designation, including these General Provisions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.

(3) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies or business units, as identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of this Contract, then "LOCKHEED MARTIN" means that subsidiary or affiliate.

(4) "LOCKHEED MARTIN Procurement Representative" means a person authorized by LOCKHEED MARTIN's cognisant procurement organisation to administer and/or execute this Contract.

(5) "SELLER" means the party identified on the face of this Contract with whom LOCKHEED MARTIN is contracting.

(6) "Task Order" means a separate order issued under this Contract.

(7) "Work" means all required labour, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

(b) In this Contract:

(1) The singular shall include the plural and vice versa, the words " include" and " including" shall be construed without limitation and the headings of clauses are for convenience and shall not affect the interpretation of the Contract; and

(2) References to any statute or statutory provision include references to that statute or statutory provision as amended, consolidated or replaced from time to time.

(2) References to any statute or statutory provision include references to that statute or statutory provision as amended, consolidated or replaced from time to time.

## 10. DISPUTES

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Any dispute not resolved between the parties shall be subject to the exclusive jurisdiction of the English Courts. Disputes under this Contract which involve a matter in dispute between LOCKHEED MARTIN and the Authority, may at LOCKHEED MARTIN's election, be resolved in accordance with DEFCON 530.

(b) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN.

## 11. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

## 12. ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS

(a) "Environmental and Health and Safety Law" means any and all laws, by-laws, common laws or other laws or legislation made by a competent authority and rules, regulations, ordinances, orders, notices, directives, practices, guidance notes, circulars, and codes issued pursuant to the same and any authoritative judicial or administrative interpretation of each of the foregoing which have as a purpose or effect or which relate to the protection of or responsibility on relation to the Work, including without limitation:

(1) The Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) 2002/95/EC;

(2) The Directive on Waste Electrical and Electronic Equipment (WEEE) 2002/96/EC;

(3) Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH);

(4) Any National legislation implementing RoHS, WEEE or REACH;

(5) CE Marking and any related product safety requirements pursuant to any applicable New Approach and Global Approach Directives; and

(6) Section 6 of the Health and Safety at Work etc. Act 1974.

(b) Notwithstanding any other provision of this Contract, SELLER warrants and undertakes to LOCKHEED MARTIN that:

(1) All Work furnished under this Contract shall at all times comply with Environmental and Health and Safety Law;

(2) All Work furnished under this shall be marked with a CE Marking where applicable.

(3) It shall not supply or use any products or materials containing Chlorofluorocarbons (CFCs) in the provision of Work without the prior written approval of LOCKHEED MARTIN. Such approval shall only be given when in the opinion of LOCKHEED MARTIN no reasonable alternative to CFCs exists; and

(4) It shall not specify, or permit use of, in Work, any materials or components containing such retardants, including but not limited to Polybrominated Biphenyls (PBBs) and Polybrominated Biphenyl Ethers (PBBEs), also known as Polybrominated Biphenyl Oxides (PBBOs) and shall provide LOCKHEED MARTIN with certification of compliance as required or for the avoidance of doubt containing any other substance to the extent that it is or would reasonably be expected to be subject to any restriction or other limitation on its use under Environmental and Health and Safety Laws.

(c) If the Work or any portion thereof is to be shipped to or performed in the United States:

(1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to LOCKHEED MARTIN hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(2) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

### 13. EXCUSABLE DELAY

(a) SELLER shall be excused from, and shall not be liable for, failure of performance to the extent due to causes beyond SELLER's control and without SELLER's fault or negligence, including, but not limited to, acts of God or public enemy, acts of Government in either sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, unusually severe weather and delays of common carriers.

(b) In order to be excused from performance under (a) SELLER shall submit, within ten (10) calendar days of the start of the event causing delay, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the control of the Seller and not due to its negligence or fault and what efforts Seller will make to minimize the length of delay. Seller shall submit within ten (10) calendar days of the end of the event a written notice stating the impact to the schedule and evidence justifying the length of the delay.

(c) If the delay extends for thirty (30) days or more this Contract may be terminated by LOCKHEED MARTIN without additional cost and without liability to SELLER.

### 14. EXPORT CONTROL

(a) SELLER agrees to comply with all applicable United Kingdom export control laws and regulations, specifically including, but not limited to, the requirements of the Export Control Act including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, outside of the United Kingdom, without the authority of an export license, agreement, or applicable exemption or exception.

(b) SELLER agrees to notify LOCKHEED MARTIN if any deliverable under this Contract is restricted by export control laws or regulations.

(c) SELLER shall immediately notify the LOCKHEED MARTIN Procurement Representative if SELLER's right to export any part of the Work or data is denied, suspended or revoked in whole or in part by any United Kingdom, or other relevant, governmental entity or agency. Delays on the SELLER's part to submit the relevant paperwork for Export Licences shall not constitute an excusable delay under the Excusable Delay clause of this Contract.

(d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the United Kingdom Department of Business Enterprise and Regulatory Reform, or the cognizant department or agency for any other country having export control authority over any of the Work, and that it maintains an effective export/import compliance program in accordance with the applicable governmental restrictions.

(e) Where SELLER is a signatory under a US Department of State export license or export agreement (e.g., Technical Assistance Agreement or Manufacturing License Agreement), SELLER shall provide prompt notification to the LOCKHEED MARTIN Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the US International Traffic in Arms Regulations, and the initiation or existence of a U.S. Government investigation, that could affect the SELLER's performance under this Contract.

(f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

(g) If the technical data required to perform this Contract is subject to export control restrictions, SELLER shall comply with the following: (1) The technical data shall be used only to perform the Work required by this Contract, (2) the data shall not be disclosed to any person not authorized for receipt of the data under any applicable export license or agreement, (3) any rights in the data may not be acquired by any foreign person, (4) SELLER, including lower-tier subcontractors, shall return, or at LOCKHEED MARTIN's direction, destroy all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms, (5) unless otherwise directed by LOCKHEED MARTIN, SELLER shall deliver the Work only to LOCKHEED MARTIN, and (6) SELLER shall include the terms of this paragraph (g) in all lower-tier subcontracts issued under which technical data is provided to a lower-tier subcontractor.

## **15. EXTRAS**

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

## **16. FURNISHED/ISSUED PROPERTY**

(a) LOCKHEED MARTIN may provide to SELLER property owned by either LOCKHEED MARTIN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in LOCKHEED MARTIN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract, the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by LOCKHEED MARTIN.

(e) Property furnished or issued by the Authority, or that the Authority takes title under this Contract shall be subject to the DEFCONs included in this Contract in lieu of paragraphs (a) through (d) above.

## **17. GRATUITIES/KICKBACKS**

(a) SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a LOCKHEED MARTIN supplier.

(b) SELLER shall not do, and warrants that in entering into this Contract, it has not done, any act on violation of the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts 1906-1916.

## **18. INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.

(b) SELLER shall be responsible for and hold harmless LOCKHEED MARTIN and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

## **19. INFORMATION OF LOCKHEED MARTIN**

Information provided by LOCKHEED MARTIN to SELLER remains the property of LOCKHEED MARTIN. SELLER agrees to comply with the terms of any Proprietary Information Agreement with LOCKHEED MARTIN and to comply with all proprietary information markings and restrictive legends applied by LOCKHEED MARTIN to anything provided hereunder to SELLER. SELLER agrees not to use any LOCKHEED MARTIN provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of LOCKHEED MARTIN. SELLER shall maintain data protection processes and systems sufficient to adequately protect LOCKHEED MARTIN information.

## **20. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to LOCKHEED MARTIN without prior execution of a proprietary information agreement by the parties.

## **21. INSPECTION, ACCEPTANCE AND TEST**

(a) LOCKHEED MARTIN and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. LOCKHEED MARTIN's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming Work, LOCKHEED MARTIN may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of LOCKHEED MARTIN necessary to enable such Work to comply in all respects with Contract requirements.

(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

(e) Unless this Contract expressly provides otherwise, title to Work shall pass to LOCKHEED MARTIN upon final acceptance. If under this Contract any part of the price is payable before delivery, the ownership of all material allocated for the Contract shall vest in LOCKHEED MARTIN when it is so allocated and SELLER shall mark the material accordingly but it shall be at SELLER's risk until delivered to LOCKHEED MARTIN.

## **22. INSURANCE/ENTRY ON LOCKHEED MARTIN PROPERTY**

(a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of LOCKHEED MARTIN or its customers for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain for the performance of this Contract employers liability in the amount of £10 million per occurrence, public/products liability in the amount of £5 million per occurrence, professional indemnity (as applicable) in the amount of £5 million per claim, such other insurance that is required by law, and such other insurance as LOCKHEED MARTIN may require. SELLER shall provide LOCKHEED MARTIN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance, which LOCKHEED MARTIN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SUPPLIER's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.

(b) SELLER'S personnel, including SELLER's subcontractors, shall comply with all LOCKHEED MARTIN security, safety, rules of conduct, badging and personal identity, and related requirements while on LOCKHEED MARTIN premises. In addition, prior to entry on LOCKHEED MARTIN premises, SELLER shall coordinate with LOCKHEED MARTIN to gain access to facilities. SELLER shall provide information reasonably required by LOCKHEED MARTIN to ensure proper identification of personnel. LOCKHEED MARTIN may, at its sole discretion, have SELLER remove any specified employee of SELLER from LOCKHEED MARTIN's premises and request that such employee not be reassigned to any LOCKHEED MARTIN premises under this Contract.

(c) SELLER shall defend, indemnify and hold harmless LOCKHEED MARTIN, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors.

## **23. INTELLECTUAL PROPERTY**

(a) In this clause, "Foreground Information" means inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER; and "Background Information" means inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated by or on behalf of SELLER otherwise than under this Contract.

(b) SELLER agrees that LOCKHEED MARTIN shall be the owner of all Foreground Information. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to LOCKHEED MARTIN, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at LOCKHEED

MARTIN's request and expense, all documentation necessary to perfect title therein in LOCKHEED MARTIN. SELLER agrees that it will maintain and disclose to LOCKHEED MARTIN written records of, and otherwise provide LOCKHEED MARTIN with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of LOCKHEED MARTIN and subject to the protection provisions of the clause entitled "Information of LOCKHEED MARTIN". SELLER agrees to assist LOCKHEED MARTIN, at LOCKHEED MARTIN's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

(c) SELLER warrants that the Work performed or delivered under this Contract and the use by LOCKHEED MARTIN or its customers of any such Work will not infringe or otherwise violate the intellectual property rights of any third party in the United Kingdom or any foreign country. SELLER agrees to defend, indemnify, and hold harmless LOCKHEED MARTIN and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(d) To the extent that any Background Information used, included, or contained in the Work or deliverable items and not owned by LOCKHEED MARTIN pursuant to this or a previous agreement with SELLER, SELLER grants to LOCKHEED MARTIN an irrevocable, non-exclusive, world-wide, royalty-free licence to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such Background Information and (ii) authorize others to do any, some or all of the foregoing.

(e) All reports, memoranda or other materials in written form, including machine readable form, prepared by SELLER pursuant to this Contract and furnished to LOCKHEED MARTIN by SELLER hereunder shall become the sole property of LOCKHEED MARTIN.

(f) Clauses (b) and (d) above shall not apply to any Contract in which SELLER has signed a Design Rights and Patents (Subcontractors) Agreement set out in DEFFORM 177 with the Ministry of Defence. In relation to any such Contract, LOCKHEED MARTIN is hereby granted by the Seller a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence (with a right to sub-licence) to use and to have used on its behalf in the performance of LOCKHEED MARTIN's obligations under the Prime Contract and any other contract with the UK Ministry of Defence or any other UK Government department all Foreground Information including all copyrights, patent rights and other intellectual property rights therein, This licence includes a licence under any Background Information, and intellectual property rights therein, required to enable LOCKHEED MARTIN to exercise the licence granted under this clause (f).

## **24. LANGUAGE AND STANDARDS**

All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of weights and measures called for by the Statement of Work, Technical Specifications, etc., applicable to this Contract.

## **25. NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

## **26. OFFSET CREDIT/COOPERATION**

This Contract has been entered into in consideration of LOCKHEED MARTIN's international offset programs. All offset benefit credits resulting from this Contract are the sole property of LOCKHEED MARTIN to be applied to the offset program of its choice. SELLER agrees to assist LOCKHEED MARTIN in securing appropriate offset credits from the respective country government authorities. SELLER agrees to make fair and reasonable representations to the pertinent Offset authority to help LOCKHEED MARTIN secure the award of said credits.

**27. PACKING AND SHIPMENT**

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the LOCKHEED MARTIN Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be Delivery Duty Paid (INCOTERMS 2000 DDP) to the destination identified in this Contract.

**28. PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) LOCKHEED MARTIN's receipt of the SELLER's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by LOCKHEED MARTIN or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify LOCKHEED MARTIN of any such overpayments found by SELLER.
- (c) LOCKHEED MARTIN shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Contract or any other contract between the parties.
- (d) Payment shall be deemed to have been made as of the date of mailing LOCKHEED MARTIN's payment or electronic funds transfer.
- (e) The prices stated in the Contract shall be in pounds Sterling and firm i.e., not subject to variation for any reason whatsoever and include all royalties, licences and taxes (other than United Kingdom Value Added Tax and Customs Duty) which may be payable. The prices also include any cost of embodiment, packaging, handling and cost of compliance with all conditions of the Contract, unless otherwise stated elsewhere herein.

**29. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (2) this CorpDoc; and (3) the Statement of Work.

**30. PROHIBITED SOFTWARE/HARMFUL CODE**

- (a) This clause only applies to Work that includes the delivery of software.
- (b) As used herein,
  - (1) "Harmful Code" means any computer code or programming instructions that are intentionally constructed with the ability to damage or otherwise adversely affect computer programs, data files or hardware or gather information without the agreement or consent of the user.
  - (2) "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry

Standards License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License."

(3), "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (i) open source, publicly available, or "free" software, library or documentation, or (ii) software that is licensed under a Prohibited License, or (iii) software provided under a license that (a) (A) subjects the delivered software to any Prohibited License, or (B) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (C) obligates LOCKHEED MARTIN to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (1) the delivered software, or any portion thereof, in object code and/or source code formats, or (2) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(c) Unless SELLER has obtained LOCKHEED MARTIN's prior written consent, which LOCKHEED MARTIN may withhold in its sole discretion, SELLER shall not use in connection with this Contract, or deliver to LOCKHEED MARTIN, any Prohibited Software.

(d) SELLER represents and warrants that any code provided in the Work shall not contain any Harmful Code. SELLER shall have written procedures designed to prevent any code provided in the Work from being contaminated by Harmful Code, and will, upon request, make such procedures available to LOCKHEED MARTIN for review. SELLER shall notify LOCKHEED MARTIN immediately of any suspected or known contamination, remove any Harmful Code, and restore the code to meet contract specifications.

(e) SELLER agrees to defend, indemnify, and hold harmless LOCKHEED MARTIN, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys fees, relating to use in connection with this Contract or the delivery of Prohibited Software and or Harmful Code.

### **31. QUALITY CONTROL SYSTEM**

(a) SELLER shall provide and maintain a quality control system to an industry recognised Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to LOCKHEED MARTIN and its customers.

### **32. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of LOCKHEED MARTIN.

### **33. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

### **34. SEVERABILITY**

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### 35. STOP WORK

(a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from LOCKHEED MARTIN, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, LOCKHEED MARTIN shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

### 36. SURVIVABILITY

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following clauses:

- Applicable Laws
- Counterfeit Work
- DEFCONS (those provisions which by their terms should survive.)
- Electronic Contracting
- Export Control
- Independent Contractor Relationship
- Information of Lockheed Martin
- Insurance/Entry on Lockheed Martin Property
- Intellectual Property
- Prohibited Software/Harmful Code
- Release of Information
- Rights of Third Parties
- Warranty

### 37. TIMELY PERFORMANCE

(a) SELLER's timely performance is a critical element of this Contract.

(b) Unless advance shipment has been authorized in writing by LOCKHEED MARTIN, LOCKHEED MARTIN may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify LOCKHEED MARTIN, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by LOCKHEED MARTIN.

### 38. UNITED STATES GOVERNMENT - INELIGIBILITY FOR AWARD

(a) SELLER certifies that, to the best of its knowledge and belief, that SELLER and/or any of its principals, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any United States Government agency.

(b) SELLER shall provide immediate written notice to LOCKHEED MARTIN if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

### **39. WAIVERS, APPROVALS, AND REMEDIES**

(a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.

(b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.

(c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

### **40. WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship and shall be fit for purpose and of satisfactory quality. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified by LOCKHEED MARTIN then without prejudice to any other remedy of LOCKHEED MARTIN, SELLER, at LOCKHEED MARTIN's option, shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work, return of nonconforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or re-performance of Work is not carried out promptly, LOCKHEED MARTIN may elect to return, re-perform, repair, replace, or reprocur the non-conforming Work at SELLER's expense. All warranties shall enure to the benefit of both LOCKHEED MARTIN and its customers.

## **SECTION II: DEFCON FLOWDOWN PROVISIONS**

### **A. INCORPORATION OF DEFCON CLAUSES**

The United Kingdom Ministry of Defence Conditions ("DEFCON") clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and shall apply to this Contract in the circumstances stated below, and subject to any notes following the clause citation. Where, prior to the date of this Contract the DEFCON recited below has been superseded by a later version or edition of the DEFCON, then the later version or edition shall be deemed to form part of this Contract in place of the edition or version cited below.

### **B. NOTES**

(a) As used in the DEFCON clauses referenced below and otherwise in this Contract:

1. The term "Contractor," mean "SELLER" as defined in Section I, Standard Provisions.
2. "Contract" means this contract.
3. "Prime Contract" means the contract between LOCKHEED MARTIN and the UK Ministry of Defence or between LOCKHEED MARTIN and its customer who has a contract with the UK Ministry of Defence.
4. "Sub-contract" means any contract placed by SELLER or lower-tier sub-contractors under this Contract.

(b) DEFCON 501 (Edn 04/04) "Definitions and Interpretations" shall apply to the extent that any of the DEFCONs included in the Contract contain any of the defined terms therein. The provisions of DEFCON 501 are in addition to any definitions included in the Contract. In the event of a conflict between a definition contained at DEFCON 501 and a definition contained elsewhere in the Contract, the definition in the Contract shall take precedence unless otherwise noted.

**C. AMENDMENTS REQUIRED BY PRIME CONTRACT**

SELLER agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

**D. DEFCON FLOWDOWN CLAUSES INCORPORATED BY REFERENCE**

**1. The following DEFCON clauses apply to this Contract:**

DEFCON 113 Diversion Orders (Edn 10/04) (SELLER shall promptly comply with any instructions to divert orders given to it by LOCKHEED MARTIN where such instructions arise from LOCKHEED MARTIN's receipt of instructions from the UK Ministry of Defence under and in accordance with DEFCON 113.)

DEFCON 117 Supply Of Documentation For NATO Codification Purposes (Edn 05/06) (Communications between SELLER and the Authority under this clause shall be made through LOCKHEED MARTIN.)

DEFCON 513 Value Added Tax (Edn 09/97)

DEFCON 516 Racial Discrimination (Edn 06/04) (Only the APPENDIX and ANNEX to APPENDIX applies. "Subcontractor" means "SELLER" and "Contractor" means "LOCKHEED MARTIN.")

DEFCON 520 Corrupt Gifts And Payments Of Commission (Edn 08/09) (In paragraph 4 delete "DEFCON 614" and replace with "the clause entitled "Default" of the Contract.")

DEFCON 521 Subcontracting To Supported Employment Enterprises (Edn 10/04)

DEFCON 632 Third Party Intellectual Property Rights – Commercial And Non-Commercial Articles And Services (Edn 02/07)

DEFCON 645 Export Potential (Edn. 07/99)

DEFCON 649 Vesting (Edn 07/99) ("Authority" means "LOCKHEED MARTIN." "DEFCON 525" means "the acceptance provisions of this Contract." Nothing in this paragraph shall prejudice the Authority's rights under the Vesting provision in the Prime Contract.)

DEFCON 656 Break (Edn 03/06) "Authority" means "LOCKHEED MARTIN." (The indemnity referred to in paragraph (c) shall apply to the extent LOCKHEED MARTIN is indemnified by its customer in connection with this Contract.)

DEFCON 691 Timber And Wood-Containing Products Supplied Under The Contract (Edn 08/02) ("Authority" means "LOCKHEED MARTIN and the Authority.")

**2. The following DEFCON clauses apply to this Contract if the value of the Contract equals or exceeds £75,000 and the Contract is awarded by other than competitive tender**

DEFCON 127 Price Fixing Condition For Contracts Of Lesser Value (Edn 10/04) ("Authority" means "LOCKHEED MARTIN" except in paragraph 5 where it means "Authority and LOCKHEED MARTIN.")

**3. The following DEFCON clauses apply to this Contract if the value of the Contract equals or exceeds £100,000 and the Contract is awarded other than by competitive tender.**

DEFCON 643 Price Fixing (Edn 07/04) (Only the Appendix to this DEFCON applies. "Contractor means "LOCKHEED MARTIN" and "subcontractor" means "SELLER.")

DEFCON 653 Pricing On Ascertained Costs (Edn 10/04) (Only the Appendix to this DEFCON applies. "Subcontractor" means "SELLER." "Authority" includes "LOCKHEED MARTIN.")

**4. The following DEFCON clauses apply to this Contract if the value of the Contract equals or exceeds £150,000 and the Contract is awarded other than by acceptance of the lowest competitive tender.**

DEFCON 648 Availability Of Information (Edn 10/02) (Only the Appendix to this DEFCON applies. "Authority" includes LOCKHEED MARTIN and "subcontractor" means "SELLER.")

**5. The following DEFCON clauses apply to this Contract if the value of this Contract equals or exceeds £250,000 and the Contract is awarded other than by acceptance of the lowest competitive tender.**

DEFCON 651 Reference To The Review Board Of Questions Arising In Relation To Relevant Subcontracts Including Those With A Subsidiary Company Or Firm (Edn 08/09)(Only the Appendix to this DEFCON is incorporated into this Contract. "Subcontractor" means "SELLER.")

**6. The following DEFCON clauses apply to this Contract if the value of this Contract equals or exceeds £5,000,000 and the Contract is awarded other than by acceptance of the lowest competitive tender.**

DEFCON 648A Availability Of Information (Edn 07/04) Only the Appendix to this DEFCON applies. ("Authority" includes LOCKHEED MARTIN. "Subcontractor" means "SELLER." "Contractor" means LOCKHEED MARTIN.)

DEFCON 651A Reference To The Review Board Of Questions Arising In Relation To Relevant Subcontracts Including Those With A Subsidiary Company Or Firm (Edn 07/04) (Only the Appendix to this DEFCON is incorporated into this subcontract. "Subcontractor" means SELLER.)

DEFCON 695 Interim Summary Cost Statement – Post Costing (Edn 07/04) (Only the Appendix to this DEFCON is incorporated into this Contract. "Subcontractor" means SELLER.)

DEFCON 696 Provisions In Relation To A Final Summary Cost Statement – Post Costing (Edn 07/04) (Only the Appendix to this DEFCON is incorporated into this Contract. "Subcontractor" means "SELLER.")

**7. The following DEFCON clauses apply to this Contract as indicated:**

DEFCON 23 Special Jigs, Tooling And Test Equipment (Edn 08/09) (Applicable if special jigs, tooling and/or test equipment are acquired under the Contract.) (Communications between SELLER and the Authority under this clause shall be made through LOCKHEED MARTIN. In paragraph 3, "other Government funds" is changed to "from under contracts with LOCKHEED MARTIN contracts or UK Government funds." In paragraphs 7 and 8, "Authority" means " LOCKHEED MARTIN and the Authority.")

DEFCON 68 Supply Of Hazardous Articles And Substances (Edn 02/07) (Applicable if the Contract involves the delivery of, or requires interaction with, hazardous substances.) (Information furnished under this clause shall be submitted by SELLER to LOCKHEED MARTIN.)

DEFCON 76 Contractor's Personnel At Government Establishments (Edn 12/06) (Applicable if SELLER will access UK Government establishments during the term of this Contract.)

DEFCON 129 Packaging (Edn 07/08) (Applicable if SELLER will make direct shipments to the Authority.)

DEFCON 531 Disclosure of Information (Edn 05/05) (Applicable unless the parties have entered into a separate Non-Disclosure Agreement.)

DEFCON 595 General Purpose Automatic Test Equipment Data Requirements (Edn 10/04) (Applicable if SELLER generates test data specified in the Annex to this DEFCON.)

DEFCON 601 Redundant Material (Edn 10/04) (Applicable if redundant material, will be provided to SELLER under the Contract.) "Authority" means "LOCKHEED MARTIN" except in paragraph 1 where it means "Authority or LOCKHEED MARTIN.")

DEFCON 607 Radio Transmissions (Edn 11/04) (Applicable if SELLER will be required to make radio transmissions in connection with testing and developing electronic equipment.)

DEFCON 608 Access And Facilities To Be Provided By The Contractor (Edn 10/98) Clauses 1 and 2 apply if SELLER is identified in LOCKHEED MARTIN's Prime Contract. The term "Authority" includes LOCKHEED MARTIN.)

DEFCON 611 Issued Property (Edn 10/04) (Applicable if SELLER will be provided Customer Issued Property.) Applies to United Kingdom Issued Property in the possession of SELLER. Communications between SELLER and the Authority under this clause shall be made through LOCKHEED MARTIN.)

DEFCON 624 Use Of Asbestos In Arms, Munitions Or War Materials (Edn 04/00) (Applies if SELLER will be furnishing parts or material under this Contract.)

DEFCON 644 Marking of Articles (Edn 10/98) (Applicable if SELLER will make direct shipments to the Authority.)

DEFCON 659 Security Measures (Edn 06/09) (Only the Appendix applies. Applies if SELLER will require access to material marked as Confidential or above. "Second Party" means SELLER. "Subcontractor" means SELLER's lower tier subcontractor.)

DEFCON 694 Accounting For Property Of The Authority (Edn 06/06) (Clauses 1, 2, 4 and 7 apply if SELLER will have responsibility in its Public Store Account for the Authority's property.) SELLER shall provide LOCKHEED MARTIN copies of all communications with the Authority under this clause.)

**8. The following intellectual property and related DEFCON clauses are to be included as indicated below in any Design Rights and Patents (Subcontractors) Agreement in the form set out in DEFFORM 177 to be signed by SELLER with the UK Ministry of Defence.**

**(a) For Research and Technology Contracts.**

DEFCON 703 Intellectual Property Rights – Vesting In The Authority (Edn 11/02) (Applicable to fully funded Contracts where the UK Ministry of Defence requires ownership of the rights in the results to be vested in the Secretary of State for Defence.)

DEFCON 705 Intellectual Property Rights – Research And Technology (Edn 11/02) (Applicable if SELLER will be performing fully funded Research and Technology Work under the Contract.)

**(b) For Contracts for the design and development of, or the provision of post-design services in relation to, equipment and/or software.**

DEFCON 14 Inventions And Designs – Crown Rights And Ownership Of Patents and Registered Designs (Edn 11/05) (Applicable if this Contract is for research, design or development.)

DEFCON 14A Collaboration – Ownership of Patents and Registered Designs (Edn 11/05)

DEFCON 15 Design Rights and Rights to Use Design Information (Edn 02/98)

DEFCON 16 Repair And Maintenance Information (Edn 10/04) (Applicable if this Contract requires SELLER to provide operating manuals, repair and maintenance manuals or other standard repair and maintenance documentation.)

DEFCON 21 Retention of Records (Edn 02/98). (Applicable to all Contracts that include DEFCON 15 or DEFCON 16.)

DEFCON 90 Copyright (Edn 11/06) (Applicable to all copyright works generated under this Contract except those the subject of DEFCONs 15 and 9.)

DEFCON 91 Intellectual Property Rights In Software (Edn 11/06) (Applicable if this Contract requires the generation or delivery of computer software.)

DEFCON 126 International Collaboration (Edn 11/06)