

## 1. DEFINITIONS

In this Order:

**BAE SYSTEMS:** means BAE SYSTEMS Australia Limited ABN 29 008 423 005

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

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

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

## 2. APPLICATION

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

## 3. CHANGES

- (a) BAE SYSTEMS may direct a change to the Order with respect to the delivery date, the shipping or packing instructions, or the place of delivery and the Supplier shall comply with BAE SYSTEMS' written instructions without delay.
- (b) Within fourteen (14) days after notification of any changes in accordance with Clause 3(a), the Supplier shall submit an Order Change Proposal to BAE SYSTEMS which shall detail the effect of such change on the delivery schedule or the price.

BAE SYSTEMS and the Supplier shall agree any reasonable adjustment to the delivery schedule or the price and incorporate such agreement into the Order by written amendment.

- (c) BAE SYSTEMS may also amend the Order with respect to any of the following:
  - (i) the quantity of the Supplies;
  - (ii) the quality of the Supplies; or
  - (iii) any specification or drawings;

provided that an Order amendment pursuant to clause 3(c) shall not take effect until BAE SYSTEMS and the Supplier have agreed any reasonable adjustment to be made to the delivery schedule or the price stated in the Order, and incorporated such agreement into the Order by written amendment.

## 4. DELIVERY, RISK AND TITLE

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

## 5. ACCESS

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

## 6. CONFORMITY WITH ORDER

- (a) The Supplier warrants that the Supplies shall conform to the quantity, quality (including quality assurance requirements) and specification stated in the Order, and shall be free from defect in design (except where BAE SYSTEMS is the design agent), materials and workmanship.
- (b) Where BAE SYSTEMS acceptance tests are defined in the order, acceptance of the Supplies shall take place after satisfactory completion of the acceptance tests. If BAE SYSTEMS unreasonably and without notification to the Supplier fails to commence the tests within one (1) month of the date of actual delivery, the Supplies will be deemed to have been accepted at the end of the (1) month period from the date of actual delivery.
- (c) Where no acceptance tests are defined in the Order, acceptance of the Supplies shall take place either after completion of inspection by BAE SYSTEMS or at the end of one (1) month from the date of actual delivery, whichever is the earlier.
- (d) If the Supplies do not conform to the quantity, quality (including quality assurance requirements) or specification stated in the Order, or do not meet the required standards of design, material or workmanship, then BAE SYSTEMS shall be entitled, without prejudice to any other remedy, to exercise one or more of the following rights:
  - (i) to reject all or any of the Supplies and require the Supplier to credit BAE SYSTEMS with the price of the Supplies;
  - (ii) to require the Supplier to promptly replace or repair the Supplies free of all cost and at the Supplier's risk; or
  - (iii) to require the Supplier to indemnify all BAE SYSTEMS' reasonable expenses and additional costs connected with such defect.
- (e) The provisions of this clause 4 shall apply in addition to, and without prejudice to, any other of BAE SYSTEMS' rights hereunder or at law, whether express or implied.
- (f) The warranty rights under this clause shall be assignable to BAE SYSTEMS, or for the benefit of its customer or the ultimate end-user of the Supplies, for a period of at least twelve (12) months from the actual date of delivery or from the Order date of delivery (whichever is later).

## 7. CONFIDENTIALITY

- (a) The Supplier shall:
  - (i) not use the information in the Order except for the purpose of supplying the Supplies to BAE SYSTEMS;
  - (ii) not grant third parties access to Order information without the prior written consent of BAE SYSTEMS, and only use such information

for the purpose for which the consent is granted;

- (iii) require any third party to whom Order information is provided to sign an undertaking in the same terms as the Supplier's undertaking
- (b) The Supplier shall not use BAE SYSTEMS' name or any of the Order information for publicity purposes without BAE SYSTEMS' prior written consent.

## 8. ITEMS ON LOAN

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

## 9. PRICE AND PAYMENT

- (a) Prices shall be non-variable and inclusive of all taxes (other than GST), duties, packaging and delivery of the Supplies to the destination or freight-forwarder stated in the Order.
- (b) In the event that a variable price has been agreed, no later than 6 months after submission of an invoice the Supplier shall submit a separate claim for payment of any amount calculated in respect of the price variation. The Supplier shall have no entitlement whatsoever in respect of claims made outside that period.
- (c) After delivery of the Supplies, invoices shall be submitted to BAE SYSTEMS at the address stated on the Order and marked for the attention of the Accounts Department.
- (d) BAE SYSTEMS requires invoices to be provided in the approved GST format and requires any applicable Australian GST to be separately identified on the invoice. Invoices not in the required format will not be processed by BAE SYSTEMS. All prices shall be on a GST exclusive basis.
- (e) Invoices will be paid by BAE SYSTEMS by the end of the month following the month of the invoice unless otherwise nominated on the order.
- (f) All invoices raised must detail the Order number, line number and match the Order specifically with regard to the price, quantity and unit of measure. Invoices must be submitted in the same currency as the Order. All non compliant invoices will be rejected.

## 10. DOCUMENTATION

Advice notes and certificates of conformity shall be submitted by the Supplier in duplicate, the original to accompany the Supplies and a copy to

be sent by post to the BAE SYSTEMS stores supervisor at the address stated in the Order.

#### 11. INTELLECTUAL PROPERTY

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

#### 12. WAIVER

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

#### 13. INDEMNITIES

The Supplier shall indemnify BAE SYSTEMS against all liability, damages, costs, loss, expense and damage of any nature whatsoever arising from Supplier's negligence, breach of duty, breach of statute or otherwise, which is caused by or arises from:

- (a) the performance by the Supplier of the Order;
- (b) the design, manufacture, sale, use or possession of the Supplies;
- (c) any infringement, breach or misuse of any patent, copyright, trademark, registered design or other industrial or intellectual property; or
- (d) any failure to conform to or comply with the requirements of the Order.

#### 14. INSURANCE

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

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

#### 15. SUBCONTRACTS

The Supplier shall not subcontract any of the work, nor assign any of its rights or obligations hereunder without first obtaining the written consent of BAE SYSTEMS. BAE SYSTEMS consent shall not relieve the Supplier of any of its duties, liabilities or obligations under this Order.

#### 16. CONTINUITY OF SUPPLY

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

#### 17. TERMINATION AND SUSPENSION

- (a) The Order may be terminated for convenience by BAE SYSTEMS at any time in whole or part by giving written notice of termination to the Supplier. In the event of such notice being given the Supplier shall stop work forthwith and shall comply with any directions with regard to the Supplies which may be given by BAE SYSTEMS.
- (b) The Supplier shall submit within one (1) month from the effective date of termination the Supplier's termination claim. BAE SYSTEMS shall pay a fair and reasonable price to the Supplier in respect of any commitments, liabilities or expenditure reasonably and properly incurred by the Supplier in connection with the Order and which would otherwise represent an unavoidable loss to the Supplier. BAE SYSTEMS shall not be liable to pay any sum which, when taken together with any other sum or sums paid or due to the Supplier under the Order, shall exceed the total price of the Supplies the subject of the said notice of termination.

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

- (c) In the event of any stoppage, delay or interruption of Supplier's work or business as a result of strikes, lockouts, trade disputes, breakdown, accident or any cause whatsoever beyond the reasonable control of Supplier, then BAE SYSTEMS may suspend or postpone its obligations hereunder until the stoppage, delay or interruption has ceased.
- (d) If the Supplier defaults on any of its obligation under the Order, BAE SYSTEMS shall have the right to terminate all or part of the Order by written notice without prejudice to any other of its rights or remedies, and shall be liable only for Supplies delivered and accepted by BAE SYSTEMS.
- (e) If the Supplier becomes insolvent or has a receiver or administrator appointed in respect of its business or any of its assets or is compulsorily or voluntarily wound up, then BAE SYSTEMS shall have the right to terminate the Order by written notice without prejudice to any other right or remedies, and shall be liable only for Supplies delivered and accepted by BAE SYSTEMS.
- (f) No termination or suspension of the Order shall prejudice any rights or obligations of either party hereunder or at law. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.

#### **18. NOTIFICATION OF NON-CONFORMING PRODUCT**

- (a) If, at any time during the period from delivery of the Supplies through the life of type of the Supplies, the Supplier becomes aware of any defect in the Supplies which adversely affects, or is likely to adversely affect, the operation of the Supplies or the safety of personnel, the Supplier shall give notice of the defect to BAE SYSTEMS. Such notice shall be provided in writing per 18(c) below.
- (b) Where the adverse effect or likely adverse effect is critical to the operation of the Supplies or the safety of personnel, the Supplier shall give notice to BAE SYSTEMS immediately on becoming aware of the defect and shall provide a fully documented confirmation of the notice per the requirements of 18(c) below.
- (c) The Supplier shall provide notices within the period prescribed in relevant regulations and legislation applicable to this order and in all other cases within 20 working days of the Supplier becoming aware of the defect.
- (d) Notices are to be addressed to:  
The Quality Manager  
BAE SYSTEMS  
PO Box 1068  
Salisbury SA 5108

#### **19. APPLICABLE LAW**