

**BAE Systems Land Systems**  
**Standard Conditions of Purchase**

1 **Definitions and Interpretation**

- (1) "Amendment" means any change to the Order notified by the Buyer to the Supplier.
- (2) "Buyer" means the BAE Systems Land Systems company specified as such in the Order as the purchaser of the Supplies.
- (3) "Contract" means any contract between the Buyer and the Supplier for Supplies formed in accordance with clause 3.
- (4) "Intellectual Property Rights" means all intellectual and industrial property rights including patents, registered designs, design rights, trade marks, copyright, rights in confidential information and any other rights of a similar kind in any part of the world, as well as applications for any of the aforesaid where applicable, and the right to apply for and own any of the aforesaid.
- (5) "Order" means the purchase order incorporating these terms issued by the Buyer to the Supplier and any Amendment.
- (6) "Specification" means the technical requirements, specifications, drawings and other descriptions of the Supplies incorporated in the Order.
- (7) "Spares" means spare parts for the Supplies.
- (8) "Supplier" means the supplier specified as such in the Order.
- (9) "Supplies" means all articles, materials, tooling, works and services to be supplied under the Order.
- (10) The headings in these terms are for convenience only and shall not affect their meaning.

2 **Application**

These terms are an integral part of the Order and shall apply except to the extent they are inconsistent with any special conditions appearing on or otherwise incorporated in the Order, which shall have precedence over these terms. The Supplier acknowledges that all its provision of Supplies to the Buyer invoke these terms. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of Order, specification or other document or otherwise asserted or introduced by the Supplier will govern or form part of the Contract between the parties unless expressly agreed in writing by an authorised signatory of the Buyer.

3 **Contract Formation**

Each Order from the Buyer to the Supplier shall be deemed to be an offer by the Buyer to buy Supplies subject to these terms. A contract is formed between the parties when the Supplier either expressly by giving notice of acceptance, or impliedly by commencing performance of the Order, accepts the offer.

4 **Amendments**

The Buyer may at any time give notice to the Supplier of proposed Amendments to the Order. Within 14 days of receipt of any such notice the Supplier shall submit to the Buyer a statement of the effect of any such proposed Amendment and as soon as reasonably practicable the Buyer and the Supplier shall agree upon any necessary and reasonable adjustment to the Order. Unless otherwise specified, no Amendment to the Order is effective until made by written agreement of the authorised representatives of the Buyer and the Supplier.

5 **Price and Payment**

- (1) Unless otherwise stated in the Order the price shall be firm (not subject to variations) and exclusive of VAT, but inclusive of all other charges including but not limited to charges for duties, packaging, insurance and delivery.
- (2) If value added tax is payable it shall be separately identified on the invoice and shall be payable to the Supplier subject to receipt of a valid VAT invoice including the Supplier's VAT registration number.
- (3) The Supplier shall submit its invoice to the Buyer only after, and separately from, valid delivery of the Supplies into the Buyer's possession in accordance with clause 7. Each invoice shall quote the Order number, item, part and drawing numbers, description, quantities and weights.
- (4) The price shall be payable 30 days after receipt of a valid invoice from the Supplier.
- (5) Time for payment shall not be of the essence of the Contract. If any sum under the Order is not paid when due then that sum shall bear simple interest from the due date until payment is made in full, both before and after any judgment, at 4% per annum over the Bank of England base rate from time to time. The Supplier is not entitled to suspend or delay delivery of the Supplies (in whole or in part) as a result of any sums being outstanding. The Parties agree that this provision is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

- (6) The Buyer shall be entitled at its sole option to set off against sums due under this Order to the Supplier any sums which the Supplier may owe the Buyer, or which may become due to the Buyer, under this Order or any other contract between them or in tort or otherwise.
- (7) If during the period of the Order the Supplier quotes or charges a price lower than the Order price to a customer purchasing comparable quantities of supplies similar to the Supplies then the Buyer will be entitled to receive from the Supplier a reduction in the price of the Supplies to the lower price.
- (8) Subject to any express terms to the contrary in the Order the Buyer gives no commitment as to any exclusivity of relationship with the Supplier or any commitment as to minimum volumes or quantities of Supplies.

## 6 **Title and Risk**

- (1) Unless otherwise stated in the Order, title to the Supplies shall pass to the Buyer on the earliest of final assembly, production or final packaging of the Supplies. Risk shall pass to the Buyer on final completion of delivery, including off-loading and stacking.
- (2) Notwithstanding the passing of title in the Supplies, the Buyer shall be entitled to reject any Supplies in accordance with Condition 8 below and, upon such rejection, title and risk in the rejected Supplies shall revert to the Supplier.

## 7 **Delivery**

- (1) Unless otherwise stated in the Order, delivery of the Supplies shall be made by handing over the Supplies at the Buyer's premises or other location nominated in the Order and obtaining the Buyer's written receipt for the Supplies concerned. Receipt shall not of itself constitute acceptance of the Supplies by the Buyer. Unless otherwise stipulated by the Buyer in the Order, the Buyer shall only accept deliveries during normal business hours, being 8 am – 4 pm Monday to Thursday and 8 am – 11am Friday.
- (2) Delivery shall be strictly in accordance with the Order, and in particular Supplies are only validly delivered once all certificates, reports, manuals, drawings, software, source code and other required documents relating to the Supplies or the Order have been provided to the Buyer. Time for delivery shall be of the essence of the Contract.
- (3) The Supplier shall pack the Supplies securely and properly prior to despatch, mark the packaging with the Buyer's Order number, and be wholly responsible for all losses and damages in transit. Each delivery shall be accompanied by the documentation specified in the Order. If no such documentation is stated then as a minimum each delivery shall be accompanied by a certificate of conformity and a delivery note specifying the Order number, item, part and drawing numbers, description, quantities and weights.
- (4) Without prejudice to the Buyer's remedies for delay, the Supplier shall promptly notify the Buyer at any time that it becomes apparent to the Supplier that any delivery dates specified in the Order may not be met for whatever reason.
- (5) The Buyer shall without incurring liability have the option to suspend or vary the delivery schedule as set out in the Order subject to giving 14 days notice to the Supplier. Condition 7(2) shall apply to the delivery schedule as varied.
- (6) If the Supplies are not delivered on the due date, then without prejudice to any other rights which the Buyer may have, the Buyer reserves the right to:
  - (a) cancel the Order in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Supplies which the Supplier attempts to make;
  - (c) recover from the Supplier any expenditure incurred by the Buyer in obtaining supplies in substitution for the Supplies from another supplier; and
  - (d) claim damages for any additional costs or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to deliver the Supplies on the due date.
- (7) Where the Buyer agrees to accept delivery by instalments the Order shall be construed as a single Contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment on the specified delivery date or as specified in the Order, shall entitle the Buyer, at its option, to treat the whole Order as repudiated.

## 8 **Acceptance and Rejection**

- (1) Acceptance of the Supplies shall take place when the acceptance procedures specified in the Order have been completed to the satisfaction of the Buyer. If no such acceptance procedures are specified then acceptance of the Supplies shall be deemed to have taken place if the Buyer has not served a notice of rejection on the Supplier within 90 days after delivery of the Supplies concerned. The Buyer shall also have the right to reject the Supplies as though they had not been accepted for 90 days after any latent defect in the Supplies has become apparent.
- (2) The Buyer may, by notice to the Supplier, reject any Supplies that do not conform to all requirements of the Order. The rejection of any Supplies shall entitle the Buyer at its discretion and without prejudice to any other remedy:
  - (a) to require the Supplier to remove from its premises any Supplies in respect of which the Buyer has served a rejection notice;

- (b) to recover from the Supplier the price in full pending recovery of which the Buyer shall have a lien and power of sale over the Supplies concerned in respect of such price;
  - (c) to require the Supplier promptly at the Buyer's option and at the Supplier's expense and risk to either repair or replace or re-perform the Supplies; and
  - (d) to require the Supplier to reimburse the Buyer for all reasonable losses, costs and expenses the Buyer incurs connected with such rejection.
- (3) Payment will not of itself confer or imply acceptance of the Supplies by the Buyer.

9 **Quality Assurance**

- (1) The Supplies shall be subject to such statutory and/or publicly recognised national or international quality assurance conditions and other quality stipulations as are specified on the Order. In any event the provision of the Supplies and their quality shall conform to best industry practice.
- (2) The Supplies shall be subject to the mandatory clauses of the version of the Buyer's quality assurance requirements prevailing at the time the Order is made, along with such supplementary clauses as are called up at the time the Order is made.
- (3) The certificate of conformity provided with each delivery shall confirm with evidence that the agreed programme of tests and inspection has been carried out and that the Supplies conform to all requirements of the Order.

10 **Access**

- (1) The Supplier shall provide access to the Supplier's premises, on reasonable notice, to representatives of the Buyer, and to representatives of the Buyer's ultimate customer for the article containing the Supplies, for the purposes of monitoring the Supplier's progress and quality standards in fulfilling the Order. The Supplier shall also make available at no extra cost such reasonable facilities as are necessary for such monitoring, including but not limited to office space and communications facilities. As far as is reasonably practical, the Supplier shall ensure that such access rights are included in its material sub-contracts.
- (2) If as a result of such monitoring/inspection the Buyer is not satisfied that the Supplies will comply with the Specifications and the Order the Buyer shall inform the Supplier within 30 days of the inspection and the Supplier shall immediately take such action, at its cost, as is necessary to ensure conformity and quality. In addition, the Buyer shall have the right to require and witness further testing and inspection. Without prejudice to any other rights of the Buyer any failure of this obligation by the Supplier will be deemed a material breach not capable of remedy entitling the Buyer to terminate the Order under Condition 24(1).
- (3) The Supplier shall remain fully responsible for the Supplies and any such inspection/monitoring shall not diminish or otherwise affect the Supplier's obligations under the Order.

11 **Force Majeure**

- (1) If the Supplier without fault or negligence will be delayed in fulfilling the Order due to any acts of nature, biohazard, war, hostilities, terrorism, civil commotion or national industrial disputes impacting on the Supplier then the Supplier shall notify the Buyer not later than 5 (five) business days after becoming aware of the relevant circumstance, giving details of its likely effect and how long it is estimated to last.
- (2) Provided that the Supplier has complied with the notice requirements in sub-clause (1) above then the Buyer shall allow the Supplier such extension of time for delivery of the delayed Supplies as shall be reasonable, provided always that the Supplier shall not be entitled to any extension of time unless it shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Buyer to proceed with the work. However, if such delay exceeds 60 days the Buyer shall be entitled to cancel the Order without incurring liability except in respect of Supplies already delivered to the Buyer prior to such cancellation in which case the principles contained in Condition 24(2) shall apply.
- (3) The Buyer may without liability to the Supplier wholly or partly suspend acceptance of Supplies during or after complete/partial stoppage of work at any of the Buyer's premises by reason of factors outside the Buyer's reasonable control.

12 **Warranty**

- (1) The Supplier warrants that the Supplies conform in all respects with the Specification and the Order, are new and unused and are free from defects (whether actual or latent) in materials and workmanship. Unless manufactured pursuant to a design provided by the Buyer, the Supplier shall assume design responsibility for the Supplies and warrants that they are free from design defects.
- (2) Without prejudice to any other rights of the Buyer the Supplier will, at the Buyer's option and at the Supplier's expense, either repair or replace or re-perform or refund the cost of any Supplies or part thereof which breach the warranty in Condition 12(1) within a period of 18 months from the date of acceptance. All Supplies so replaced or repaired or re-performed shall be warranted for an additional 18-month period calculated from the date of acceptance by the Buyer after repair, replacement or re-performance.

- (3) If the Supplier fails to take immediate steps to remedy any defects in the Supplies, then the Buyer shall be entitled to arrange for the defect to be rectified by a third party or carry out such rectification itself at the Supplier's risk and all costs and expenses incurred in so doing shall be borne by the Supplier.
- (4) The warranties given by the Supplier shall be without prejudice to all other rights and remedies of the Buyer in respect of any failure by the Supplier to comply with the obligations imposed by the Order. The Buyer's rights under these terms are in addition to the statutory conditions implied in favour of the Buyer including, without limitation, those under the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (in each case as amended from time to time).

### 13 **Free Issue**

- (1) Where the Buyer issues material and/or equipment ("Material") free of charge to the Supplier for the purposes of the Order such Material shall be and remain the property of the Buyer and shall be used in the execution of the Order and for no other purpose.
- (2) The Supplier shall inspect such Material on receipt and unless notice to the contrary is given to the Buyer within 14 days of receipt it shall be deemed to have been received in good condition and in the quantities specified in the Buyer's despatch note.
- (3) The Material shall be separately stored and booked and shall be clearly marked as "Property of BAE Systems." All such Material and all items incorporating such Material shall remain the property of the Buyer and neither the Supplier nor its sub-contractor shall have any lien on them for any sum due to the Supplier or any sub-contractor. The Supplier shall take all steps as may be necessary to ensure that the title of the Buyer, and the exclusion of any such lien, is brought to the notice of all persons who may be affected by the Buyer's title.
- (4) The Supplier shall at its own cost maintain all such Material in good order and condition subject, in the case of tooling and patterns, to fair wear and tear and shall be solely responsible for any loss or damage from whatever cause until returned to the Buyer.
- (5) At the request of the Buyer (which may be made at any time) or on completion of the Order, such Material issued to the Supplier shall, unless incorporated into the Supplies, be returned promptly to the Buyer at the Supplier's cost or otherwise dealt with in accordance with the Buyer's instructions.
- (6) The provisions of this Condition 13 shall apply, mutatis mutandis, to any Material belonging to a third party issued to the Supplier on their behalf by the Buyer.

### 14 **Government Contracts**

Orders required for UK Ministry of Defence contracts shall be subject to those UK MoD defence conditions (DEFCONS) and other government conditions as are specified in the Order. For the purpose of interpreting such conditions, as between the Buyer and the Supplier the Buyer shall assume rights and obligations of the "Authority" and the Supplier shall assume the rights and obligations of the "Contractor".

### 15 **Compliance with Law and Regulations**

- (1) The Supplier shall comply with all statutory and other requirements applicable to the performance of the Order and the Supplier warrants that the Supplies shall not cause the Buyer or any customer of the Buyer to contravene any law or regulation when used for the purposes disclosed to the Supplier at the time of the Order.
- (2) The Supplier warrants that it has obtained all necessary import/export approvals for the provision of the Supplies to the Buyer, having regard to the fact that the Supplies may be for a military use. The Supplier warrants that the Supplies may be used, exported or re-exported by the Buyer without restriction, subject only to those restrictions expressly disclosed to the Buyer at the time the Order is made, including without limitation any restrictions arising under or pursuant to the UK Export Control Act 2002 (or any successor thereto) or the US International Traffic in Arms Regulations or Export Administration Regulations.

### 16 **Inducements**

- (1) The Supplier shall not:
  - (a) induce an employee of the Buyer to make any concession to the Supplier, issue the Order to the Supplier or alter any of the requirements or terms of the Order in return for any gift, money or other inducement;
  - (b) 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
  - (c) encourage an employee, sub-contractor or agent of the Buyer to commit any act of dishonesty against the Buyer or a third party.
- (2) From commencement of the Order until the end of the period of 12 months after termination or expiry (whichever is earlier) of the Order, the Supplier agrees to refrain from directly or indirectly employing, engaging or seeking to employ or engage any employee of the Buyer to whom the Supplier has been introduced or with whom the Supplier has had business dealings as a result of or in connection with the Supplier's participation under or in relation to an Order, unless such employee (i) resigns voluntarily (without

any solicitation, inducement or involvement from or on behalf of the Supplier) or (ii) their employment is terminated by the Buyer after the date hereof. Notwithstanding the above, general solicitations of employment including through trade publications and the use of search agencies not directed at such employees and the hiring of any person so identified will not be a breach of this provision.

17 **Work performed on the Buyer's Premises**

If any services or work performed by the Supplier under the Order are to be performed wholly or partly on premises ("the Site") occupied by the Buyer or any subsidiary or associate company of the Buyer then the Supplier shall:

- (a) comply with all its statutory obligations under health and safety at work legislation;
- (b) satisfy itself, by enquiry of the Buyer and all other appropriate means, that it possesses such information relating to the Site, the conditions under which its duties under the Order are to be performed and all other relevant matters, as is required to enable it to fulfil those obligations and fulfil them safely;
- (c) instruct its employees and sub-contractors working on the Site in all matters relevant to the safety of such work and insure or procure observance of all applicable safety precautions;
- (d) keep the Buyer informed of (i) any health and safety hazards or risks associated with the work to be performed by him or any of his representatives and (ii) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Buyer in order to control such hazards or risks;
- (e) keep the Buyer informed of any matter that could affect the future conduct or safety of operations on the Site and/or the ability of the Buyer to comply with its own obligations under health and safety legislation; and
- (f) at all times observe, and ensure that its employees, agents, sub-contractors and all persons under its control are aware of and observe, the rules for contractors and any other regulations and instructions relating to the entry of persons on to, and the conduct of persons upon, the Site.

18 **Continuity of Supply and Spares**

- (1) The Supplier shall ensure that Spares are available for purchase by the Buyer until one year after delivery of the last Supplies under the Order. In respect of Spares manufactured by third parties the Supplier shall use reasonable endeavours to source such Spares from the original supplier or a suitable alternative source.
- (2) For as long as the Supplies and/or Spares remain in production the Supplier shall not unreasonably refuse to accept orders for Supplies and/or Spares at prices and delivery lead times and on other conditions no less favourable to the Buyer than those agreed for this Order, having regard to economic and other conditions at the time.
- (3) Should the Supplier decide to discontinue the production of Supplies or Spares then the Supplier shall provide the Buyer with a "Last Time Buy Notice" at least six (6) months prior to discontinuing production. Such notice shall provide the Buyer with details of the end of production and shall give the Buyer the option to:
  - (a) make a purchase of Supplies or Spares from the last production run;
  - (b) purchase any stockpile of Supplies or Spares held by the Supplier;
  - (c) purchase on fair and reasonable terms any drawings, tooling, moulds, test equipment or other technology relating to the Supplies (including any associated Intellectual Property Rights not already available to the Buyer) to allow the Buyer to produce or procure the production of Supplies or Spares; and
  - (d) require the Supplier at no charge to supply reasonable technical assistance to the Buyer to establish a new source for the Supplies.
- (4) The provisions of this Condition 18 survive termination or expiry of the Order.

19 **Insurance**

- (1) The Supplier shall at its own cost maintain, and require its sub-contractors to maintain (i) Employers' Liability Insurance in accordance with statutory requirements (ii) public liability insurance in respect of death, personal injury or property damage with a limit of not less than £10,000,000 (ten million pounds) or such other limit as the Buyer may require for any one event or series of events and (iii) product liability insurance to a level commensurate with the exposure potential when the Supplies are incorporated into the Buyer's products with an insurer of international repute, with a minimum security rating at any time of not less than A, for at least three (3) years following the termination of this Order.
- (2) The Supplier's insurance policies shall name the Buyer as an additional insured and include an indemnity to principal clause.
- (3) The Supplier's insurance shall take into consideration the risks this Order brings to the Buyer and include, where relevant, motor legal liability, aviation legal liability or marine legal liability related insurance in each case with a limit of not less than £10,000,000 (ten million pounds) for any one event.
- (4) If the Supplier is engaged in design or advice services to the Buyer then the Supplier must maintain professional indemnity insurance with an insurer of international repute, with a minimum security rating at any time of not less than A, for at least six (6) years following the termination of this Order.
- (5) The Supplier shall provide such evidence that all required insurance is in force and all premiums are paid as the Buyer may from time to time require.

- (6) No minimum figure of insurance cover required by the Buyer under the Order shall be construed as limiting the liability of the Supplier or its sub-contractors under the Order. Should the Supplier or sub-contractor have cover in excess of that required then the Buyer shall have the full benefit of such policy.
- (7) The provisions of this Condition 19 survive termination or expiry of the Order.

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### **Indemnity**

- (1) The Supplier shall indemnify and hold harmless the Buyer and its respective officers, employees, sub-contractors and agents from and against any and all losses (including, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), claims, demands, proceedings, damages, costs (including legal and other professional costs), charges and expenses whatsoever awarded against, incurred or paid by the Buyer due to any tort, negligence, breach of contract or breach of statutory duty by the Supplier, its sub-contractors, employees and/or agents arising out of or in connection with the Order.
- (2) On termination of the Order or the termination of the provision of any of the goods or services to be provided pursuant to an Order, howsoever arising, the Supplier will indemnify and keep indemnified the Buyer (for itself and any incoming supplier) against all and any costs, claims, loss or expense suffered or incurred by the Buyer or the incoming supplier by virtue of the operation or alleged operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or other legislation having similar effect) in connection with such termination (including without limitation in relation to any dismissal or alleged dismissal of any employees by the Buyer or an incoming supplier).

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### **Confidentiality of Information**

- (1) Except with the consent of the Buyer in writing, the Supplier shall not disclose any details of the Order or the Supplies or any other technical or commercial information, know-how, specifications, inventions, processes or initiatives of the Buyer or its group which are of a confidential nature to any person other than a person employed by the Supplier in the carrying out of the Order or any sub-contractor of the Supplier accepting a like obligation. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purpose of the Order.
- (2) All documents, including (without prejudice to the generality) specifications, drawings, plans or other data and any information contained therein supplied by the Buyer for the purposes of the Order including all copies shall remain the property of the Buyer and shall be returned to the Buyer on completion of the Order or upon request of the Buyer. The Supplier shall not use or permit any third party to use such documents or such information or any document or information generated by the Supplier under the Order for any purpose whatsoever other than the fulfilment of the Order.
- (1) The provisions of this Condition 21 survive termination or expiry of the Order.

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### **Intellectual Property**

- (1) The Supplier warrants that the Supplies and anything done by the Buyer or its customer in relation to the Supplies will not infringe any Intellectual Property Rights of a third party.
- (2) The Supplier shall indemnify the Buyer against all losses, claims, demands, charges, fees (including legal and other professional costs), payments, royalties, damages, costs and expenses of any kind arising from the infringement or alleged infringement of any Intellectual Property Rights owned or controlled by a third party in relation to the work done under the Order or to anything done by the Buyer or its customer in relation to the Supplies.
- (3) Unless otherwise stated in the Order, all Intellectual Property Rights created as a result of the work undertaken by the Supplier or its sub-contractors for the purpose of the Order shall vest in and be the absolute property of the Buyer, and the Supplier shall (at its own cost) do all necessary acts to vest such intellectual property in the name of the Buyer or its nominee, such acts to include (without limitation) the execution of documents.

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### **Offset**

The Supplier acknowledges that the Buyer and other companies within the BAE Systems group accrue significant offset obligations resulting from international sales. To assist in satisfying these obligations, where applicable, the Buyer may wish to take advantage of the Order and Supplier's supply chain and investment activity in order that offset credits can be claimed in identified target markets. The Supplier acknowledges that the Buyer and other companies within the BAE Systems group are entitled to utilise the total value of the Order and any sub-contracts placed by the Supplier arising from this Order in fulfillment in whole or in part of any offset obligation placed, or to be placed, upon a company in the BAE Systems group. The Supplier shall seek and obtain the Buyer's written permission prior to using this Order and/or any sub-contracts arising from this Order in satisfaction of the Supplier's own or any other party's offset obligations. On request by the Buyer, the Supplier shall take all reasonable steps, including the execution of documents, to assist the relevant BAE Systems company in registering the Order and any associated sub-contracting with the appropriate body to obtain offset credits.

**Termination**

- (1) The Buyer may by notice to the Supplier immediately terminate the Order or any specified part in the event that the Supplier:
- (a) becomes bankrupt or insolvent, makes an arrangement with its creditors, has a receiver or administrator appointed over it, has distress or execution levied in respect of 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
  - (b) fails to perform or observe any of the terms of the Order and fails to remedy the same, where capable of remedy, within 14 days after receipt of notice from the Buyer; and
  - (c) suffers a deterioration in its financial position to such an extent that in the opinion of the Buyer the capability of the Supplier to adequately fulfil its obligations under the Order has been placed in jeopardy.
- (2) On termination and in respect of that part of the Order terminated:
- (a) no further sums shall become due to the Supplier save in respect of Supplies completely delivered prior to termination, payment for which shall be postponed until such time as the Buyer's claims against the Supplier under the Order shall have been finally established and quantified;
  - (b) the Buyer shall be entitled to procure the supply of goods and services in replacement for Supplies not delivered prior to the termination from any alternative source and the Supplier shall provide (with licences where required) all data, drawings, plans, Specifications, Intellectual Property Rights, software and source code necessary for that purpose. Any additional costs incurred by the Buyer in obtaining such goods and services from such alternative source and all expenses incurred by the Buyer in finding and arranging such alternative source shall be sums due and owing by the Supplier to the Buyer; and
  - (c) the Buyer shall have the option to purchase any work in progress from the Supplier at a fair and reasonable price.
- (3) The Buyer shall be entitled at any time, by 14 days prior notice in writing to the Supplier, to terminate the Order or any part for convenience, following which the Supplier shall cease all work except to the extent specifically directed by the Buyer (and shall instruct its sub-contractors similarly). The Buyer shall pay a reasonable sum for work done under the Order but shall not be liable for any loss of profit or of trading revenue and the sum payable shall not in any event exceed the price of the Supplies under the Order.
- (4) This Condition 24 shall be without prejudice to any other remedy that the Buyer may have under the Order or at law.
- (5) The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or the Supplier accrued prior to termination and the Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

**Waiver**

No exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in any party under or pursuant to the Order shall constitute a waiver by that party of that or any other right, power or remedy.

**Assignment and Sub-Contracting**

No work on the Order may be sub-contracted by the Supplier except within the UK and as is customary in the trade and the Order may not be assigned or transferred in whole or in part by the Supplier in each case without the prior written consent of the Buyer. Notwithstanding any sub-contracting the Supplier shall remain entirely responsible for the full performance of the Order. The Buyer reserves the right to assign the Order or part thereof without the prior consent of the Supplier.

**Severance**

Should any provision of the Order be deemed invalid, illegal, void or unenforceable then that provision shall be deemed severed from the Order, which shall continue in force notwithstanding such severance. The parties shall nevertheless negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the severed provision.

**Entire Agreement**

The Contract contains all the terms which the Buyer and the Supplier have agreed in relation to the Supplies and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Supplies. The Supplier acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Buyer which is not set out in the Order or an Amendment. Nothing in this Condition will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

29 **Law**

- (1) The Order shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising under or in connection with this Order and that accordingly any proceedings in respect of any such claim or matter may be brought in such courts. The Supplier agrees that it will not object to the courts of England and Wales being the forum for such matters. Nothing in this Condition shall limit the right of the Buyer to take proceedings or pursue the enforcement of any judgement against the Supplier in any other court of competent jurisdiction. The taking of proceedings in any one or more jurisdictions shall not preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- (2) For the avoidance of doubt the parties irrevocably agree that the United Nations Convention on the International Sale of Goods shall not apply to the Order.

30 **Notices**

- (1) Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with the Order being served on it in accordance with the provisions of this Condition. Nothing contained in these terms shall affect the right to serve proceedings in any other manner permitted by law.
- (2) Any notices or other communications required to be given in connection with the Order shall be in writing and shall be deemed to be duly given if given by any of the following means, namely by hand, by facsimile or by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom). Any such notice shall be deemed to have been received (i) if delivered personally, at the time of delivery (ii) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting (iii) in the case of registered airmail, five days from the date of posting and (iv) in the case of fax, at the time of transmission. In proving such service it shall be sufficient to prove that the envelope containing such notice was sent to the address of the relevant party set out in the Order (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the number of the relevant party set out in the Order (or as otherwise notified by that party). Notice given under this Contract shall not be validly served if sent by e-mail.

31 **Third Parties**

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