

**CONDITIONS OF CONTRACT**

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## **CONDITIONS OF CONTRACT**

### **1. DEFINITIONS**

1.1 In this Contract, the following words and expressions shall have the meanings hereby assigned to them except where it is otherwise expressly stated:

(a) "Articles" means all articles, including parts or units thereof, which the Contractor is required to supply under the Contract.

(b) "Authority" means the Government of the Republic of Singapore, represented by the Ministry of Defence.

"Agency" means the Defence Science and Technology Agency (DSTA), a body established by the DSTA Act having the functions and powers given by the Act.

The Agency shall have the power pursuant to the DSTA Act to enter into this agreement and to manage this agreement for the Authority and to do such other acts as are incidental to its functions and powers.

(c) "Contract" includes the Conditions of Contract, and any Letters of Acceptance and Orders issued by the Authority to the Contractor for the supply of the Articles and/or Services.

(d) "Contract Price" means the price exclusive of the Singapore Goods and Services Tax payable to the Contractor for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract and in law.

(e) "Day" means calendar day including Holiday in Singapore.

(f) "Holiday" in relation to the doing of an action means a Saturday, Sunday or public holiday in Singapore.

(g) "Working day" means any day other than a Saturday, Sunday or a public holiday in Singapore for the purpose of Sub-Clause 1.4.

(h) "Services" means the work which the Contractor is required to perform under the Contract.

(i) "Suspect part" means a part which there is an indication by visual inspection, testing, or other information that it may have been misrepresented by the supplier or manufacturer and may meet the definition of counterfeit part provided below.

(j) "Counterfeit part" means a suspect part that is a copy or substitute without legal right or authority to do so or one whose material, performance, or characteristics are knowingly misrepresented by a supplier in the supply chain. Examples of counterfeit parts include, but are not limited to:

(i) Parts which do not contain the proper internal construction (die, manufacturer, wire bonding, etc.) consistent with the ordered part;

(ii) Parts which have been used, refurbished or reclaimed, but represented as new product;

(iii) Parts which have different packaging style or surface plating/finish than the ordered parts;

- (iv) Parts which have not successfully completed the Original Component Manufacturer's (OCM)'s full production and test flow, but are represented as completed product;
- (v) Parts sold as upscreened parts, which have not successfully completed upscreening; or
- (vi) Parts sold with modified labelling or markings intended to misrepresent the part's form, fit, function or grade.
- (vii) Parts which have been refurbished, upscreened, or uprated and have been identified as such, are not considered counterfeit.

1.2 Words importing the singular include the plural and vice versa.

1.3 The headings are for convenience only and not for the purpose of interpretation.

1.4 Where the last day of any period prescribed for the doing of an action falls on a Holiday, the action shall be done no later than the first working day after the Holiday. For clarity, the doing of an action refers to the day where performance of an obligation under the Contract is due to be performed, including but not limited to date of delivery, date for due payment of liquidated damages, date of return of Articles repaired under warranty claim.

## **2 SCOPE OF CONTRACT**

The Contractor shall supply the Articles and/or Services in accordance with the specifications, plans, drawings, patterns, samples or instructions, as appropriate, which form part of the Contract. Unless otherwise stated in the Contract, all Articles shall be newly manufactured goods and free from counterfeit parts.

## **3 GUARANTEE**

3.1 The Guarantee Period shall, in the case of Articles, commence on the date of receipt of the Articles in Singapore and, in the case of Services, commence on the date of completion of the Services. The length of the Guarantee Period shall be 12 months.

3.2 Where during the Guarantee Period, any Article is found to be:

- (a) defective in design, materials or workmanship; or
- (b) not in accordance with the Contract or any specifications incorporated therein by reference or otherwise; or
- (c) having been installed, operated, stored and maintained in accordance with the written instructions of the Contractor, fails to function properly or fails to meet any performance guarantees set forth in the Contract or specifications published by the Contractor as applicable to the Articles;  
then unless it is shown that the foregoing is caused solely by improper use or mishandling by the Authority, the Contractor shall, at its own expense (including transportation costs), at the written notification of the Authority, replace or completely repair the same, within the Turn Around Time of 30 days ("the TAT") which shall commence from the receipt by the Contractor of the damaged or defective Article and expire upon the receipt of the repaired or replaced Article by the Authority. Any replacement Article shall be subject to the same acceptance tests as the Article it replaces and any repaired Article shall be subject to such parts

of the said acceptance tests as are necessary to ascertain that the repaired Article is acceptable. The Guarantee Period for the replacement or repaired Article shall be extended by a period equivalent to the period commencing from the date of the said notification to the date of acceptance of the repaired/replaced Article by the Authority in Singapore. In the event that the Guarantee Period (after such extension) outstanding at the date of such acceptance is less than one month, the Guarantee Period shall be extended by a further period of one month.

3.3 If any Service performed is found during the Guarantee Period to be deficient, the Contractor shall at the written notification of the Authority, re-perform the same, at the expense (including transportation costs) of the Contractor within the TAT which shall commence from the said notification and expire upon the completion of the re-performed Service. The Guarantee Period for the re-performed Service shall be extended by a period equivalent to the period commencing from the date of the said notification to the date of completion of the re-performed Service. In the event that the Guarantee Period (after such extension) outstanding at the date of such completion is less than one month, the Guarantee Period shall be extended by a further period of one month.

3.4 If the Contractor is unable to repair or replace the defective Article or reperform the deficient Service within the aforementioned TAT, the Contractor shall in addition to any other liabilities incurred by itself under the Contract, extend the balance of the Guarantee Period by an equivalent period commencing from the expiry of the TAT to the date of acceptance of the repaired/replaced Article by the Authority or the date of completion of the re-performed Service, as the case may be.

#### **4 DELIVERY AND PERFORMANCE IN GENERAL**

4.1 Delivery of the Articles and performance of the Services shall be effected by the Contractor by the Delivery Date/Performance Date and in the manner specified in the Contract. The Contractor shall comply with any special instructions from the Authority regarding the safe transit of the Articles. Any additional costs which may be reasonably incurred by the Contractor in complying with such special instructions may be added to the Contract Price. Subject to any provision to the contrary in the Contract, 'INCOTERMS 2010' shall be deemed to be incorporated to and shall form an integral part of the Contract. In the event that the INCOTERM chosen for this Contract is CPT or CIP to a destination other than an airport or a seaport, the Contractor shall provide the Authority with the contact details of its inland freight forwarder in the country of destination.

4.2 In the event that the INCOTERM chosen for this Contract is:

- (a) CPT or CIP to a destination other than an airport or a seaport, the Contractor shall provide the Authority with the contact details of its inland freight forwarder in the country of destination. For the avoidance of doubt, for INCOTERMS CPT or CIP or CFR or CIF to the named place/port of destination (referred to as "Delivery Location"), delivery of the Articles under this Contract shall only be deemed delivered by the Contractor, when the Articles are delivered to the Delivery Location stated in the Contract or;
- (b) Ex Works, the Contractor shall complete and email the Notification on Articles ready for collection at [Appendix I](#) to the Authority's appointed Freight Forwarder that:
  - (i) The Articles are ready for collection; and
  - (ii) The shipping documents and export licence/documents in compliance with Clause 12 has been obtained and provided in this Notification, unless otherwise agreed upon by the Authority in writing prior to delivery that the Contractor is not required to obtain the necessary licence;

For the avoidance of doubt, if there are any discrepancies in the declarations made in the notification by Contractor pursuant to Clause 4.2(b)(i) and/or (ii), the Authority shall not be obligated to collect the Articles until the two discrepancies have been properly addressed, and the conditions (i) and (ii) have been fulfilled by the Contractor in accordance to the Authority's requirement.

- (c) FOB/FCA/FAS (USA) (applicable for FOB/FCA/FAS shipments originating for USA only), the Contractor shall deliver the Articles to the Authority's appointed Freight Forwarder. In addition, the Contractor shall obtain the export licence in compliance with Clause 12 and deliver the duly approved export license to the Authority's appointed Freight Forwarder together with the Articles, unless otherwise agreed upon by the Authority in writing prior to delivery that the Contractor is not required to obtain the necessary license.

## **5 PAYMENT**

5.1 Unless otherwise specified in the Contract, the Authority shall pay the Contractor within thirty (30) days after the delivery of the Articles or the performance of the Services, AND the receipt by the Authority of the commercial invoice(s) in accordance with such means and in such format as may be specified by the Authority, packing list(s), documents evidencing delivery as required under the INCOTERMS 2010 and such other documents as required for payment in accordance with the Contract. The Authority shall only make payment upon the receipt of the correct documents in proper form. For all electronic Purchase Orders received via the GeBIZ system, the Contractor is required to submit the invoices electronically via the GeBIZ system. The supporting documents required for payment as stated in the Contract or Purchase Order shall be forwarded to:

Ministry of Defence  
c/o Financial Services Centre  
Accounts Payable Branch  
5 Depot Road #15-01, DTTB  
Singapore 109681

For any enquiries on payment, the Contractor shall write to the above address or email to [eInvoice\\_Enquiry@defence.gov.sg](mailto:eInvoice_Enquiry@defence.gov.sg) with the contract/purchase order number as reference.

If the Purchase Order is not issued electronically by the Authority via the GeBIZ system, the Contractor shall forward the commercial invoice together with all supporting documents required for payment as stated in the Contract or Purchase Order to the above-mentioned address. For payment by telegraphic transfer, the Authority shall pay into the bank account specified by the Contractor in the Contract. All bank charges for the telegraphic transfer outside Singapore shall be borne by the Contractor.

5.2 Not in Use

5.3 If delivery of the Articles are to be made by a date specified in the Contract, and the Contractor delivers the Articles before the Financial Year of the said delivery date, the Authority shall have the right to withhold any payments due to the Contractor until thirty (30) days after the delivery date specified in the Contract or thirty (30) days after receipt of the Contractor's invoice and such other documents required in the Contract whichever is later. For the purpose of this Contract, the Financial Year shall mean the period from the 1st day of April of a calendar year to the 31st day of March of the following calendar year.

5.4 The payments under this clause shall not prejudice the Authority's right to deduct any amount due or recover any liquidated damages under the Contract or reject the Articles or Services or the Contractor's responsibility to replace defective or damaged Articles or to re-perform deficient Services.

5.5 Not in use

## **6 DEDUCTION FROM PAYMENTS DUE**

Without limiting the Authority's right under the Contract,

- (a) the amount of any damages, payment or debt owed by the Contractor to the Authority under the Contract may be deducted by the Authority from any monies payable by the Authority to the Contractor pursuant to this Contract or any other contracts with the Authority; and
- (b) the amount of any damages, payment or debt owed by the Contractor to the Authority under any other contracts with the Authority may be deducted by the Authority from any monies payable by the Authority to the Contractor pursuant to this Contract.

## **7 INVOICES**

7.1 In addition to the usual details, all invoices shall contain (a) the description of the Articles as set out in the Contract, as far as practicable; and (b) the country of origin of the Articles.

7.2 Separate invoices are required in respect of each order and if more than one destination is shown in the order separate invoices are required for each destination.

## **8 DELAY IN DELIVERY AND PERFORMANCE**

8.1 For the avoidance of doubt, "day" means calendar day including Holiday in Singapore as specified under Clause 1 – Definition. The Parties acknowledge that if the delivery of the Articles and Services is delayed:

- (a) the Authority will suffer loss and damage, including but not limited to of availability or use/standby, increased costs and expenses; and
- (b) all such loss and damage will, having regard to the governmental and non-commercial nature of the Articles and Services and/or to the operations of the Authority (including other Singapore Government ministries, agencies or statutory bodies) be impossible, complex or expensive to quantify accurately in financial terms and the loss and damage arising from such delay may not be able to be precisely calculated or proved,

And therefore the parties agree that the amount of liquidated damages referred to in clause 8 is:

- (a) a genuine pre-estimate of the damage which would be suffered by the Authority in such event; and
- (b) An appropriate protection of the governmental or public interests in relation to the due performance of the Contract.

8.2 If the Contractor fails to deliver any Articles or any part or unit thereof or perform any Services by the dates specified in this Contract or by any extension thereof granted pursuant to an express provision of this Contract, the Authority may, in addition and without prejudice to all other rights available under this Contract or at law,

- (a) cancel all or any such Articles or Services without being liable therefor in damages and purchase from other sources, contractors or suppliers any Articles and/or Services which have been cancelled or similar Articles and/or Services, and all costs reasonably incurred by the Authority as a result of such cancellation may be recovered from the Contractor, including but not limited to deduction or set off pursuant to clause 6; and/or
- (b) require the Contractor pay as liquidated damages a sum calculated at the rate of one-tenth percent (1/10%) of the price of the Articles or any part or unit thereof and/or Services so delayed subject to a minimum liquidated damage of S\$2 per day for each day of delay (including Holidays) and to a cap of ten percent (10%) of the price of the Articles or any part or unit thereof and/or Services delayed (“LD Cap”). The Contractor’s liability for liquidated damages under clause 8.2(b) in respect of the cancelled Articles and/or Services shall be calculated until the date of the notice of cancellation.

8.3 Once the liquidated damages incurred by the Contractor for the delayed Article or any part or unit thereof and/or Service reaches the said ten percent (10%), the Authority may terminate the Contract or part thereof in accordance with clause 17. The Contractor’s liability for liquated damages under clause 8.2(b) in respect of the delayed Articles and/or Services shall be calculated until the date of notice of termination.

8.4 For the purpose of computing liquidated damages under this clause:

- (a) each incidence of delay in supply or performance shall be treated as a separate liquidated damages claim subject to its own daily minimum value;
- (b) in the case of instalment deliveries of Articles or instalment performance of Services, each actual instalment made shall be attributed, in strict order, to the earliest unfulfilled contractual instalment; and
- (c) Where any Articles or Services is properly rejected by the Authority including rejection for the failure of any Acceptance Tests, the Contractor shall be deemed to have failed to deliver the Articles or Services so rejected.

8.5 Provided always that the Authority shall have the right, in its sole discretion, to elect to claim general damages in common law from the contractor, instead of imposing liquidated damages under, this clause 8.

8.6 Pursuant to Clause 8.2 above, the Authority is entitled to deduct, withhold or otherwise take into account an amount equivalent to the LD Cap (“Retention Sum”) from any monies payable by the Authority to the Contractor pursuant to clause 5 (Payment), for a reasonable period of time until the amount of liquidated damages is determined by the Authority (“LD Amount”). After the LD Amount has been ascertained, the Authority shall pay to the Contractor the balance, if any, of the Retention Sum (less the LD Amount).

8.7 In the event of a final judicial or arbitral determination that the Authority is not entitled in law to recover liquated damages, the Authority shall remain entitled to recover such losses, expenses, costs or damages as it would have been entitled under general law as if the provisions in this clause relating to the payment of liquated damages had not formed part of the Contract. The Contractor’s liability to pay the Authority such losses, expenses, costs or damages shall not be limited in any way whatsoever by the amount of liquated damages for which it might otherwise have been liable.

## **9 PACKAGING**

The Contractor shall ensure that the Articles are packaged in accordance with the best commercial practice and in such a manner that they are suitable for storage in the tropics and are protected from damage or deterioration during their transit from the Contractor's premises until their arrival at the final destination. The cost of all packaging materials and labour are included in the Contract Price. All packaging materials shall be non-returnable. The Contractor shall also comply with the packaging requirements specified in the Contract. The Contractor shall be responsible for any loss or damage or expenses incurred by the Authority due to packaging which is not in compliance with the requirements of this Clause. In addition, the Contractor shall, where the Authority so requires, replace any Article which is found on delivery to have been damaged due to inadequate packaging.

## **10 PROTECTION OF INFORMATION**

Except with the consent in writing of the Authority the Contractor shall not disclose the Contract or any provisions thereof or any information issued or furnished by or on behalf of the Authority in connection therewith to any person, except the Contractor's sub-contractor or employee on a need to know basis. Where such disclosure is necessary, the Contractor shall ensure that the sub-contractor or employee is bound by an obligation similar to that contained in this Clause.

## **11 SECURITY AUDIT AND INSPECTION**

11.1 The Authority reserves the right to conduct inspections and audits to ensure the Contractor's compliance with this Clause 10 (Protection of Information) relating to classified and official information and materials provided by the Authority.

11.2 Where the Authority exercises its right to conduct inspections and audits, the Contractor shall grant, at its own expense:

(a) Full and free access to the Contractor's works as and when required for that purpose;

And

(b) All reasonable facilities, including but not limited to sub-contractor's facilities, as may be required therefore; and such other assistance as the Authority may require.

## **12 LICENCES AND AUTHORISATIONS**

12.1 The Contractor shall comply with all governmental regulations and obtain and maintain all necessary export licences or other approvals from the relevant authorities in the country of origin for those Articles and Documentation to be exported to Singapore for the timely performance of the Contract. In particular, the Contractor shall obtain the necessary export licences before the contracted delivery date of the Articles. All related fees incurred shall be deemed to be included in the Contract Price. For avoidance of doubt, in the event that the INCOTERM chosen for this Contract is Ex Works and FOB/FCA/FAS (USA), the obligations under Clause 12 shall be applicable to the Contractor.

12.2 In the event that the Contractor (including its intermediate suppliers) requires the Authority's assistance to furnish End-use Certificate(s) for the application of the relevant export licences, the Contractor shall submit a request in the format set out in [Appendix III](#) of the Contract, complete with relevant supporting documents to be sent to Procurement.

12.3 Upon obtaining the relevant export approval, the Contractor shall inform the Authority of any provisos, limitations or conditions that will affect the Authority's operation or use of the Articles and



Services, or which will have a material impact on the Contractor's ability to comply with its obligations under the Contract.

12.4 Where a failure of the Contractor to comply with his obligations under this Clause is due to governmental acts or omissions (including changes in governmental policy), beyond the control and reasonable expectation of the Contractor, the consequences of which the Contractor could not be reasonably expected to avoid or overcome, the failure will constitute a Force Majeure event for which the provisions of Clause 15 (Force Majeure) will apply. Any other failure of the Contractor to comply with his obligations under this Clause 12 (Licence and Authorisations) will constitute a default in which event the Authority shall have the rights under Clause 17 (Rights of the Authority in the event of Default by the Contractor).

### **13 INTELLECTUAL PROPERTY RIGHTS**

13.1 The Contractor warrants that it has obtained or will in due time obtain all rights, relating to the use of any Intellectual Property, which may be required for the purpose of this Contract without requiring any assistance from the Authority. For purpose of this clause, "Intellectual Property" means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, know how, other proprietary information and data and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields. The Authority shall not be obliged to enter into any further agreement with the Contractor or any third party in respect of the use of such Intellectual Property. Notwithstanding the above, the Contractor shall indemnify the Authority and its officers or departments against all Intellectual Property infringement claims including any costs, charges and expenses in respect thereof.

13.2 All amounts payable for the use, whether use by the Authority or the Contractor, of any Intellectual Property pertaining to this Contract shall be deemed to be included in the Contract Price

### **14 TAXES, FEES AND DUTIES**

14.1 Unless otherwise expressly provided in this Contract, the responsibilities of the Parties for compliance with applicable import and export customs regulations and formalities and the liabilities of the Parties for any customs fees and duties and other taxes payable in relation to the import and export of the Articles shall be according to the relevant provisions of INCOTERMS 2010.

14.2 Except as provided in sub-clause 14.1 above, the Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Contractor or its employees, including the Contractor's resident engineers and inspectors (if applicable), in carrying out its obligation under the Contract.

14.3 If the Authority receives a request from the tax authorities to pay on behalf of the Contractor and/or the Contractor's employees, or to withhold payments from the Contractor in order that the Authority may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorises the Authority to comply with the terms of the said request.

14.4 The Authority shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Singapore Goods and Services Tax chargeable on the supply to the Authority of any goods and services by the Contractor in accordance with the Contract. For clarification, "Goods and Services Tax" shall refer to tax under the (Singapore) Goods and Services Tax Act, Cap. 117A (2005 revised edition).

14.5 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the Singapore Goods and Services Tax, be in the same

form and contain the same information as if it were a tax invoice for the purposes of the Regulations made under the Goods and Services Tax Act, Cap. 117A (2005 revised edition).

14.6 All references in the Contract to prices and sums of money payable shall be regarded as values before the addition of Goods and Services Tax chargeable on such values.

## **15 FORCE MAJEURE**

15.1 Force Majeure means:

- (a) Act of God;
- (b) War, act of foreign enemies;
- (c) Riot, civil commotion;
- (d) Strike, lockout, other labour disturbance (excluding those involving the contractor's employees);  
or
- (e) Any other circumstances beyond the control of the Contractor or which, in the absence of this Clause, will operate to frustrate this Contract.

15.2 Where the Contractor is prevented from or delayed in performing any of its obligations under this Contract ("the Affected Obligation") by a Force Majeure event, this Contract shall not be frustrated but, if:

- (a) The said Force Majeure event is beyond the reasonable expectation of the Parties and the Contractor cannot reasonably be expected to have avoided or overcome it or its effect; and
- (b) the Contractor has notified the Authority in writing within thirty (30) days after the commencement of the said Force Majeure event or within ten (10) days after the Contractor ought to foresee that the said Force Majeure event will prevent the Contractor from or delay it in performing the Affected Obligation(s), whichever is later; the Contractor shall be given such extension of time in respect of the performance of the Affected Obligation(s) as may be reasonable having regard to the duration of the Force Majeure event, the effect of the Force Majeure event on the Contractor's operations and the Contractor's duty to mitigate the consequences of any delay caused by the Force Majeure event. The Contractor's duty in respect of all other obligations under this Contract shall remain unaffected by any such extension of time.

15.3 Failure of the Contractor's sub-contractors or suppliers shall not entitle the Contractor to any extension of time pursuant to Sub-Clause 15.2 unless such sub-contractors or suppliers would qualify for such extension of time if the provisions of this Clause were applied to them.

15.4 If the extensions of time granted under this Clause exceeds a period of one hundred (100) days in the aggregate, the Authority may terminate this Contract by giving thirty (30) days' notice in writing to the Contractor without being liable therefore in damages or compensation.

## **16 SUSPENSION OR TERMINATION**

The Authority shall, after giving thirty (30) days notice in writing to the Contractor have the right to suspend or terminate the Contract if the Authority is affected by any state of war, Act of God or other circumstances seriously disrupting public safety, peace or good order of the Republic of Singapore. Neither party shall be liable to the other by reason of such suspension or termination save that the

Authority shall pay the Contractor the price of the Articles delivered and the Services performed and accepted by the Authority and in the event of termination, audited costs for works-in-progress (but not including anticipated profits) which have been incurred prior to the termination. The Authority shall have title to such Articles delivered and accepted and any materials paid for. The Contractor shall refund the balance of any payments or deposits made after deducting any outstanding sums owing by the Authority to the Contractor by reason of this Clause.

## **17 RIGHTS OF THE AUTHORITY IN THE EVENT OF DEFAULT BY THE CONTRACTOR**

17.1 If the Contractor defaults in his performance of this Contract, the Authority may issue a notice of default to the Contractor informing the Contractor of its default. The Contractor shall, within thirty (30) days of the date of the notice of default, remedy the default or propose a solution acceptable to the Authority. If the Contractor fails to do so or if the above cannot be done, the Contractor shall be taken to have repudiated the Contract and the Authority shall have the right to terminate the Contract or cancel any part thereof by way of a notice of termination without the Authority being liable therefor in damages or compensation. The said termination shall take effect from the date of the notice of termination. This sub-clause is without prejudice to the operation of sub-clause 8.2 of this Contract.

17.2 In the event of termination under Sub-Clause 17.1 above, the Authority shall have the right to purchase from other sources all the Articles and/or Services which remains undelivered or unperformed at the time of termination or similar Articles and/or Services and all increased costs reasonably incurred by the Authority shall be recoverable from the Contractor.

17.3 Notwithstanding anything contained herein, the Contractor shall not be entitled to claim for any reimbursement including but not limited to loss of anticipated profit and works-in progress for the value of any of the Articles not delivered or any of the Services not performed prior to the termination of this Contract.

## **18 GIFTS, INDUCEMENTS OR REWARDS**

The Authority may terminate the Contract if the Contractor or any person employed by him or acting on his behalf (whether with or without the Contractor's knowledge) has done any act or omission which contravenes any law for the suppression of corrupt practices. The Contractor shall be liable for any costs, expenses or damage incurred by the Authority as a result of the aforesaid actions and/or termination of the Contract under this Clause. For the purpose of this clause, the payment of monetary remuneration as agency fees to the Contractor's officially appointed agents in Singapore shall not be construed as a contravention of this Clause.

## **19 SUBCONTRACT AND ASSIGNMENT**

19.1 The Contractor shall not subcontract the whole of the work under the Contract. The Contractor shall not subcontract work under the Contract without first obtaining the written approval of the Authority. The Contractor is required to submit, in the formats set out in [Appendix III](#), the following to the Authority for approval. For the avoidance of doubt, the Authority will not approve any sub-contractors who are debarred by the Singapore Government:

19.1.1 Request to sub-contract work.

19.1.2 All first-level sub-contractors engaged by the Contractor under this contract. First-level sub-contractors do not include those who are supplying raw materials or intermediate goods or those that provide auxiliary services to the Contractor.

19.1.3 During the execution of the Contract, should there be any change in the sub-contracting work or first-level sub-contractors approved by the Authority pursuant to Sub-Clause 19.1.1

and 19.1.2 above, the Contractor shall submit the proposed change to the Authority for approval

- 19.2 The Contractor, by obtaining the Authority's approval for the list of sub-contractors to be engaged and by subcontracting any part of the work under the Contract, shall not be relieved of its liabilities or obligations under the Contract, and shall be responsible for all Subcontractors.
- 19.3 The Contractor, if requested by the Authority, shall provide a copy of any subcontract, which copy need not contain prices.
- 19.4 The Contractor shall not assign in whole or in part, its rights or obligations under the Contract without the written consent of the Authority.

## **20 WAIVER**

Unless otherwise specifically and expressly provided for in this Contract:

- (a) no waiver, election, renunciation or affirmation by each party shall be effective unless it is expressly so stated in writing and signed by that party's authorised representatives; and
- (b) all the rights of both parties in this Contract or otherwise are cumulative and the exercise of any right by either party shall not be considered a waiver of or an estoppel against the exercise of any other right by that party.

## **21 VARIATION OF CONTRACT**

21.1 Save as provided under Clause 21.3, no variation whether oral or otherwise in the terms of this Contract shall apply thereto unless such variation shall have first been expressly accepted in writing by the Contractor and the authorised contract signatory of the Authority. In addition, any variation or proposals for variation by the Contractor shall not be valid unless first submitted in writing to Director, Procurement prior to any acceptance.

21.2 In no event shall the Authority be liable to the Contractor either in contract, tort or otherwise, or for any form of damages for any act or omission on the part of the Authority in regard to any variation or proposals for variations which do not comply with Sub-Clause 21.1 or for any goods delivered or services performed by the Contractor pursuant to any variation which do not comply with Sub-Clause 21.1.

21.3 The Authority shall sign off a Letter of Instruction (format as set out in [Appendix IV](#)) for variation related to any of the following (as applicable):

- (a) Changes to the intermediate milestones that do not affect payment or liquidated damages provision and with no operational impact and does not affect the final milestone;
- (b) Changes to equivalent or superior model/Part No./NSN or changes/enhancement in specifications, additions or replacement of parts that are fundamentally required to fulfil the contract requirements, with no change in price and requirement;
- (c) Incidental changes such as the description of deliverables or description of milestones, or new description superseding the previous one, due to technicality or normal obsolescence;
- (d) Typo errors or genuine omission whereby there is no price impact and no change in requirement;

- (e) Confirmation of price/ rates for the goods/ services based on agreed price formula and terms as specified in the Contract.

PROVIDED the aforesaid variation has no impact to the Contract Price, payment, liquidated damages provision and/or the overall contract schedule.

## **22 APPLICABLE LAW**

The Contract and all its subsequent variations shall be deemed to be made in Singapore and shall be subject to, governed by and interpreted in accordance with the domestic Laws of the Republic of Singapore for every purpose.

## **23 ARBITRATION**

23.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause.

23.2 The commencement of any arbitration proceedings under this Clause shall in no way affect the continual performance of the obligations of the Contractor under this Contract.

## **24 NOTICES**

24.1 Any notice sent by the Authority to the Contractor shall be deemed to be properly sent, and received in the ordinary course of the mode of transmission described herein, if it is sent by hand to an authorised officer of the Contractor or by registered post or facsimile to the address or facsimile number of the Contractor in this Contract.

24.2 Any notice sent by the Contractor to the Authority shall be deemed to be properly sent, and received in the ordinary course of the mode of transmission described herein, if it is sent:

- (a) by hand to an authorised officer of the Authority at the following address:

Defence Science and Technology Agency  
Procurement  
1 Depot Road  
Singapore 109679;

- (b) by registered post to the following address:

Defence Science and Technology Agency  
Procurement  
1 Depot Road  
Singapore 109679; or

- (c) by facsimile to the following facsimile numbers:

Country Code 65, followed by 68194057

24.3 The above addresses may be altered by notice given by either Party pursuant to this Clause (which will be effective in accordance with the above "deemed receipt" provisions) or by any other means (which will be effective only upon actual receipt

## **25 EXCLUSION OF THIRD PARTY RIGHTS**

A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms.

## **26 NOT IN USE**

## **27 DANGEROUS GOODS DECLARATION**

27.1 If the Articles contain Dangerous Goods of Class 1 to 9 according to United Nations' Recommendations on the Transport of Dangerous Goods Model Regulations ST/SG/AC.10/1/Rev.15, Clause 28 (Safety) shall apply.

27.2 Where, as a result of design development or modification of the Articles (including subsystems, components, repair parts, spares, tools, supplies and accessories), materials defined as Dangerous Goods of Class 1 to 9 according to United Nations' Recommendations on the Transport of Dangerous Goods Model Regulations ST/SG/AC.10/1/Rev.15 are included in the Articles, the Contractor shall complete the Dangerous Goods Declaration Form ([Appendix V](#)). The Contractor shall submit the declaration form to the Authority within one month of such inclusion and not later than two months before the supply of Articles. Similarly, Clause 28 (Safety) shall apply.

## **28 SAFETY**

28.1 The Contractor shall ensure and guarantee that the Articles have adequate safety design.

28.2 The Contractor shall notify the Authority upon any subsequent discovery of inadequacy of safety design in the Articles during the service life of the Articles. The Contractor shall be solely responsible for improving the safety design and shall provide the modification kits to the Authority at the Contractor's own expense.

28.3 Where, subsequent to the delivery of the Articles to the Authority, the Contractor issues Service Bulletins instructing mandatory retrofit work on the said Articles to satisfy safety requirements, then the new or reworked parts required for mandatory retrofit work shall be furnished to the Authority by the Contractor without any additional charge. All redundant parts shall become the property of the Contractor.

28.4 If as a result of Sub-Clause 28.3 above, any Articles or any part or unit thereof is made redundant, the Contractor shall provide to the Authority new or reworked parts to replace any unused stock items in the Authority's inventory without charge. All redundant parts shall become the property of the Contractor.

28.5 The Contractor shall provide the required labour and technical assistance to carry out the necessary installation of the recommended or improved part, the removal of the redundant or redundant part(s) of the Articles and to conduct the necessary tests required for the acceptance of the modification, without charge to the Authority.

28.6 In no event shall any approval, endorsement or concurrence (whether verbal or written) given by the Authority to any of the Contractor's signed exhibits, specifications, documents and functional descriptions relating to the safety design of the Articles relieve the Contractor of any of its responsibilities under this Clause.

## **29 GUARANTEE OF PRODUCT SOURCE AND SUPPLY CHAIN TRACEABILITY**

29.1 The Contractor agrees that, as between the Contractor and the Authority, it shall be solely responsible for ensuring that only new and authentic materials are used in products delivered to the Authority. The Contractor shall only purchase parts directly from Original Component Manufacturers (OCMs), OCM franchised distributors, or authorised aftermarket manufacturers. Use of product that was not provided by these sources is not authorised unless first approved in writing by the Authority.

The Contractor must present compelling support for its request (eg. OCM documentation that authenticates traceability of the parts to the OCM) and include in its request all actions to ensure the parts thus procured are authentic/confirming parts.

29.2 The Contractor shall maintain a method of item traceability that ensures tracking of the supply chain back to the manufacturer of all parts included in the Articles being delivered per this contract. As and when required by the Authority, the Contractor shall make available relevant documentation for item traceability.

29.3 The Contractor shall notify the Authority upon any subsequent discovery of counterfeit parts in the Articles during the service life of the Articles. If the event that the Authority discovers suspect parts or counterfeit parts, the Authority will notify the Contractor and the Contractor shall within fourteen (14) days, establish to the satisfaction of the Authority the authenticity of the alleged parts or replace the same. The Contractor shall be solely responsible for replacing the suspect parts or counterfeit parts at the Contractor's own expense.

29.4 The Contractor shall provide the required labour and technical assistance to carry out the necessary rectification, the removal of the counterfeit part(s) of the Articles and to conduct the necessary tests required for the acceptance of the rectification, without charge to the Authority, in addition to being liable to the Authority for any costs, expenses or damage incurred by the Authority as a result of the counterfeit part(s).

29.5 If counterfeit parts are furnished under this contract, the Authority shall have the rights to impound or return the counterfeit parts to the Contractor. In the case where the Authority impounds or destroys the counterfeit parts, all cost of the same are to be borne by the Contractor. In the case where the Authority returns the counterfeit parts to the Contractor, the Contractor shall meet all cost of and incidental to the discharge of this sub-clause, including any packing, freight, disassembly and reassembly costs. The Contractor undertakes to properly destroy and dispose of the counterfeit parts forthwith and certify destruction thereafter to the Authority.

### **30 REFUND OF OVERPAYMENT BY THE CONTRACTOR**

30.1 In the event that the Contractor has actual or constructive knowledge of any discrepancy, error or miscalculation resulting in overpayment by the Authority to the Contractor (“Overpayment”), the Contractor shall immediately notify the Authority in writing and shall refund the amount of Overpayment to the Authority’s designated bank account (“Refund”) within 30 days from the day of Overpayment (“Grace Period”).

30.2 Where the Contractor fails to comply with Clause 30.1, the Contractor agrees that, in addition to the Refund, the Authority shall be entitled to recover interest on the amount of Overpayment at DBS Bank Ltd prime rate prevailing at the date of Overpayment repayable by the Contractor from the date of Overpayment to the date of Refund by the Contractor. Provided that if the Refund is made within the Grace Period, the Contractor shall not be liable to pay interest. For the avoidance of doubt, if the Refund is made after the Grace Period, the Authority shall be entitled to recover interest on the amount of Overpayment from the date of Overpayment to the date of Refund

**Appendix I**

**Notification Format via E-mail**

To: *The Authority's Freight Forwarder*

**Note:** For contact details of the Authority's Freight Forwarder and freight arrangement, the Contractor shall contact the following personnel from ST Logistics:

For air freight: [Rosalyn.Lam@stlogs.com](mailto:Rosalyn.Lam@stlogs.com)

For sea freight: [ForenKY.Ng@stlogs.com](mailto:ForenKY.Ng@stlogs.com) and [Eve.lim@stlogs.com](mailto:Eve.lim@stlogs.com)

**Notification on Articles Ready for Collection**

Purchase Order/Contract Reference: \_\_\_\_\_

Incoterm : Ex Works (\_\_\_\_\_)

Please be informed that the following deliverables in the above Purchase Order/Contract are ready for collection from our premise as provided below:

S/N	Deliverables	Quantity

Pick-up Company Name: \_\_\_\_\_

Pick-up Address:

(Address 1): \_\_\_\_\_

(Address 2): \_\_\_\_\_

(Postal code): \_\_\_\_\_

Collection Ready Date: \_\_\_\_\_ (No backdating)

Point-of-Contact (POC): \_\_\_\_\_ (Name)

(for the above pick-up address) \_\_\_\_\_ (Phone)

\_\_\_\_\_ (Email)



We declare that the shipping and export documents attached here are complete for shipment. For any clarification, please contact the following:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Phone)

**Appendix II**

**FORMAT OF DECLARATION LETTER BY THE AUTHORITY'S CONTRACTOR**

<<To be printed on Authority's Contractor company Letterhead>>

Contractor's Reference:

Date:

Deputy Director  
Procurement  
Defence Science & Technology Agency

**REQUEST FOR EXPORT CONTROL DECLARATORY DOCUMENT**

1. We would like to request for an (i)EUC (eg. NonTransfer and user certificate: DSP83 for US DoS, Statement by Ultimate Consignee and Purchaser: BS-711 for US DoC, End User Certificate Non Transfer Certificate, France), (ii) EUC AND End Use Statement(EUS), (iii) End User Declaration(EUD) <To delete accordingly>, (iv) other forms of assurance \_\_\_\_\_ <Authority's Contractor to indicate> for the item(s) listed below:

S/No	Description of EUC Item	EUC Qty	Name of Exporter & Country	Authority's Order/Contract Reference	Authority's Contract/Order Qty	Any Previous EUC belonging to the same Order/Contract ? (Yes/No)* If yes, state EUC No(s). and quantity issued.

\* Delete as appropriate.

2. The EUC is required specifically for the sole use of <<state Contractor's Company name>> to fulfil the requirements\*\* under the Authority's Order/Contract Ref <<state Order/Contract no.>> who shall not re-export, re-sell or otherwise dispose of to any other party and/or country.

3. The supply chain for the item(s) is given as follows:

Parties	Name of Authority's Contractor/Country and its corresponding Order No./dated to its supplier to its supplier	#Name of Intermediate Supplier 1/Country and corresponding Order No. /dated	#Name of Intermediate Supplier 2/Country and corresponding Order No. /dated	Exporter's Request Reference
	Eg. XYZ, (Order No. 1234 dated 2 Aug 12)	DEF, Singapore (Order No. 5678 dated 8 Aug 12)	(Note: To add column if there is more than 1 intermediate supplier)	Ref:XXXX dated XXX given in Annex __

**4. We certify that the item(s) so covered in this EUC has/ have not <To delete accordingly> been included in any of the previous EUC issued under the Authority's Order/Contract \_\_\_\_\_ referred to in Para 2 above.**

\_\_\_\_\_  
<<Name>>

\_\_\_\_\_  
<<Appointment>>  
(Authorised managerial appointment holder only)

**NOTES:**

\*\*For evaluation or testing requirements, the Contractor must state what will become of the item(s) after the evaluation or test e.g. to be returned to the Exporter, given to the Authority, totally expended, etc.

# ALL intermediate parties involved must be declared.

**Appendix III**

**APPROVAL OF SUB-CONTRACTORS**

Contract No. :  
Description :  
Date of Submission :

**PART I – INFORMATION ON SUB-CONTRACTORS**

Pursuant to Clause 19 of the Conditions of Contract, we hereby submit the proposed list of sub-contractors in Attachment 1 to Appendix III for your approval.

**PART II – DECLARATION BY MAIN CONTRACTOR**

I declare that the information in Attachment 1 to Appendix III for the proposed sub-contractors is accurate. We will further update the Authority if there are any changes or additional sub-contractors to the list in Attachment 1 to Appendix III.

We acknowledge that we shall at all times be responsible for the performance of all the obligations under this Contract, including any obligations to be performed by the proposed list of sub-contractors.

-----  
Name & NRIC No. of Director /  
Authorised Personnel

-----  
Signature & Date

-----  
Company's Stamp

**PART III – APPROVAL BY THE AUTHORITY**

-----  
Name of PM<sup>1</sup>

-----  
Signature & Date

<sup>1</sup> PM refers to the Project Lead, Project Manager, Programme Manager, Senior Manager or Manager accountable for the projects. For projects without PM, Head Procurement will be the approving authority upon seeking the user's concurrence. Prior to PM/Head Procurement's approval, PRM is required to verify the GRA registration in the GeBIZ Portal.

**Attachment 1 to Appendix III**

**Proposed List of sub-contractors**

S/N	Name of sub-contractor	Description of sub-contracting works	Qualification for sub-contracting works (if applicable)	State current and valid Government Registration Authority (GRA) registration (BCA/MOF category)	For <u>overseas</u> sub-contractor without GRA registration	
					State reason for not registering with GRA	State whether the sub-contractor is currently under debarment by any government

**Appendix IV**

**LETTER OF INSTRUCTION FORMAT**

Letter of Instruction (LOI) No. \_\_\_\_\_ dated \_\_\_\_\_

Title of LOI: \_\_\_\_\_

The Parties have entered into Contract \_\_\_\_\_ dated \_\_\_\_\_ 20\_\_\_\_ (hereinafter referred to as the “Principal Contract”). In accordance with sub-clause \_\_\_ of the Principal Contract, this LOI No. \_\_\_\_\_ (and its contents hereunder, including its attachments) shall read and take effect as one with the Principal Contract.

Effective Date: \_\_\_\_\_

Signed by:

Contents hereby  
acknowledged and accepted by:

*[Initiator of variation]*

\_\_\_\_\_  
Name:  
Designation:

\_\_\_\_\_  
Name:  
Designation:

**Letter of Instruction (LOI) No. \_\_\_\_\_**

**Attachment 1 to Appendix IV**

Eg: Annex C (Part Numbers) of the Principal Contract shall hereby be replaced with the following:

S/N	Description	Part Number

**Appendix V**

**DANGEROUS GOODS DECLARATION FORM**

I, \_\_\_\_\_ (NRIC & Name) on behalf of \_\_\_\_\_ (Company Name), hereby declare in accordance with the requirements as specified in the Conditions of Tender/Contract\* Number \_\_\_\_\_ that the supplies of the Articles (including subsystems, components, repair parts, spares, tools, supplies and accessories) for the Authority do not include/include\* materials which are defined as Dangerous Goods of Class 1 to 9 according to United Nations' Recommendations on the Transport of Dangerous Goods Model Regulations ST/SG/AC.10/1/Rev.15:

- Class 1: Explosives
  - Division 1.1 Substances and Articles which have a mass explosion hazard
  - Division 1.2 Substances and Articles which have a projection hazard but not a mass explosion hazard
  - Division 1.3 Substances and Articles which have a fire hazard and either a minor blast hazard or minor projection hazard or both, but not a mass explosion hazard
  - Division 1.4 Substances and Articles which present no significant hazard
  - Division 1.5 Very insensitive substances which have a mass explosion hazard
  - Division 1.6 Extremely insensitive articles which do not have a mass explosion hazard

- Class 2: Gases
  - Division 2.1 Flammable gases
  - Division 2.2 Non-flammable, non-toxic gases
  - Division 2.3 Toxic gases

- Class 3: Flammable liquids
- Class 4: Flammable solids; substances liable to spontaneous combustion; substances which, on contact with water, emit flammable gases
  - Division 4.1 Flammable solids, self-reactive substances and solid desensitised explosives
  - Division 4.2 Substances liable to spontaneous combustion
  - Division 4.3 Substances which in contact with water emit flammable gases

- Class 5: Oxidizing substances and organic peroxides
  - Division 5.1 Oxidizing substances
  - Division 5.2 Organic peroxides

- Class 6: Toxic and infectious substances
  - Division 6.1 Toxic substances
  - Division 6.2 Infectious substances

- Class 7: Radioactive material
- Class 8: Corrosive substances
- Class 9: Miscellaneous dangerous substances and articles

\* *Delete accordingly.*

**IMPORTANT:** Where Dangerous Goods are declared, a list of Articles that contain materials defined as Dangerous Goods shall be identified in an attached document with the required information for safety appraisal by the Authority. The identification of such items shall include: Item/Part Number/NSN\* (if available); Item Description; & Dangerous Goods Class # & Division. For Class 1 Items (explosives), the Tenderer/Contractor shall also declare their compatibility group – such as A, B, C, D, E, F, G, H, J, K, L, N, S or Z.

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Company Stamp)