



## **1. Definitions**

- 1.1** "Additional" means any conditions supplementary to these Purchase Order Conditions as specified in the Purchase Order.
- 1.2** "Conditions" means these General Conditions of Purchase and any Additional Conditions.
- 1.3** "Goods" means the items described in the Purchase Order.
- 1.4** "Guarantee Period" means twelve (12) months from delivery or the Supplier's standard guarantee period if longer.
- 1.5** "DE&S Deca" refers to the customer, an Executive Agency of the Ministry of Defence, represented by the Secretary of Defence.
- 1.6** "Purchase Order" means the contract comprising these Conditions, the ordering form, and any incorporated documents for the supply of Goods and/or Services.
- 1.7** "Services" means the services described in the Purchase Order.
- 1.8** "Discreet" means Non-Contract Purchases.
- 1.9** "Supplier" means the party to whom the Purchase Order is issued.
- 1.10** "Contractor" means an independent party engaged under a contract to provide specified goods or services without being an employee of the client. This is used interchangeably with 'Supplier'
- 1.11** "Authority" means 'the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland'

## **2. The Purchase Order**

- 2.1** DE&S Deca shall only be bound by the Purchase Order when the Supplier provides unqualified acceptance in writing within 5 (five) working days of the date on the Purchase Order. Acceptance of the Purchase Order shall also constitute acceptance of the Conditions.
- 2.2** The Conditions shall prevail over any terms or conditions contained or referred to in the Suppliers conditions of sale or in correspondence or elsewhere or implied by trade custom practice or course of dealing, unless specifically agreed to in writing by DE&S Deca and any purported provisions to the contrary are hereby excluded or extinguished. Neither DE&S Deca nor the Supplier shall be bound by any variation of the Purchase Order except as mutually agreed in writing.
- 2.3** Additional Conditions will apply if indicated on the Purchase Order and will be specified on the Purchase Order.

## **3. Specification**

- 3.1** The Goods shall conform with the Purchase Order as to quantity and description, be of satisfactory quality, be equal in all respects to the applicable samples, patterns, plans drawings, specifications and other documents, be capable of any standard of performance specified in the Purchase Order (or, if no standard is specified, be in accordance with any

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applicable British or EC Standard), be fit for any purpose expressed or implied by the Purchase Order, and comply with all applicable requirements and regulations including, in particular, any relating to health and safety.

- 3.2** Any specifications, drawings, documents, data and other information provided by the Authority to the Supplier in connection with the Purchase Order and all intellectual property rights therein shall remain the property of Authority and the Supplier shall at all times keep confidential all such information and return it to Authority on request or at completion of performance of the Purchase Order.
- 3.3** The Supplier shall provide any Services through appropriately qualified and trained personnel using all reasonable skill and care and to the satisfaction of DE&S Deca. The Supplier shall promptly replace any personnel with whose performance DE&S Deca has reason to be satisfied.

### **4. Delivery**

- 4.1** Timely delivery is of the essence.
- 4.2** The Goods shall be delivered to, and any relevant Services performed at, the delivery address stated on the Purchase Order within the time stated therein during DE&S Deca's normal working hours i.e. Monday to Thursday 6:45am - 22:15 Friday 6:45 -21:45.
- 4.3** The Goods must be adequately protected against damage and deterioration in transit and delivered carriage paid (unless otherwise notified in writing to the Supplier) and must bear the description and quantity of the contents and all packages shall be marked with the order number stated on the Purchase Order. Unless otherwise provided, all packaging shall be free and non-returnable.

### **5. Risk and Title**

- 5.1** Goods and Services shall be at the Supplier's risk until delivered to the point designated in the Purchase Order.
- 5.2** Unless the Goods and Services are to be supplied subject to a licence for any intellectual property rights, the terms of which have been notified and expressly accepted by the Authority in writing, property in the Goods and Services shall pass to the Authority on delivery without prejudice to any right of rejection; provided that, if payment has already been made in advance of delivery, property shall pass to the Authority upon receipt by the Supplier of payment. Ownership of any intellectual property rights created pursuant to the Supplier's performance of the Purchase Order shall vest upon creation in DE&S Deca.

### **6. Breach**

#### **6.1 Late Delivery**

If the Goods and/or Services are not delivered by the specified date or any agreed extension, DE&S Deca may, without prejudice to any other rights or remedies:

- (a) Cancel the Purchase Order for the undelivered Goods and Services, and any delivered Goods and Services that cannot be used due to the delay;

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- (b) Return such Goods and Services to the Supplier at the Supplier's risk and cost, and recover any payments made for them; and/or
- (c) Recover from the Supplier any reasonable additional costs incurred to obtain replacement Goods and Services."

### **6.2 Termination for Breach or Insolvency**

DE&S Deca may terminate the Purchase Order immediately by written notice if:

- (a) The Supplier breaches any obligation under the Purchase Order and fails to remedy the breach within seven (7) days of receiving written notice; or
- (b) The Supplier becomes insolvent, including but not limited to:
  - A winding-up petition is presented, or the Supplier enters liquidation (except for solvent amalgamation or reconstruction);
  - The Supplier makes an arrangement with creditors;
  - An administration order is petitioned;
  - A receiver or manager is appointed over the Supplier's assets; or
  - The Supplier is unable to pay its debts as defined by Section 123 of the Insolvency Act 1986.

**6.3** All the remedies specified in Clause 6.1 shall be without prejudice to any other legal remedies that may be available to DE&S Deca.

## **7. Rejection**

**7.1** All Goods and Services shall be subject to inspection by DE&S Deca after delivery. DE&S Deca may reject the Goods and Services if they are not in accordance with the Purchase Order. DE&S Deca shall specify the reasons for rejection and return the rejected Goods and Services to the Supplier at the Supplier's risk and expense. The Supplier shall, within the time for delivery stated within the Purchase Order or such time as DE&S Deca may agree in writing, replace such rejected Goods and Services with goods that are in all respects in accordance with the Purchase Order. Any money's paid by DE&S Deca to the Supplier in respect of any rejected Goods and Services not replaced by the Supplier within a reasonable time together with any additional expenditure reasonably incurred by DE&S Deca in obtaining other goods in replacement shall be paid by the Supplier to DE&S Deca.

## **8. Guarantee**

**8.1** If within the specified Guarantee Period DE&S Deca gives notice to the Supplier of any defect or failure in the Goods and Services which shall arise from faulty design, materials or workmanship, the Supplier shall immediately replace or repair the Goods and Services so as to remedy the defects without cost to DE&S Deca. DE&S Deca shall, as soon as practicable after discovering any such defect or failure, return the defective Goods and Services or parts thereof to the Supplier at the Supplier's risk and expense unless otherwise agreed or unless the defect or failure relates to services.

**8.2** In respect of any Goods and Services repaired or replaced a full Guarantee Period will apply from the date of replacement or completion of repair.

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### 9. Price and Payment

**9.1** The price for the Goods and Services shall be as stated in the Purchase Order and shall be exclusive of VAT with no variation unless agreed by DE&S Deca.

**9.2** If the Purchase Order is marked "Price to be agreed" or is unpriced, the supplier shall provide a fair and reasonable quotation for consideration and agreement by DE&S Deca prior to submission of an invoice for payment.

**9.3** The Supplier's invoice for the Goods and Services will be paid within 30 days of receipt by DE&S Deca provided that it is correct and duly submitted and quotes DE&S Deca's Purchase Order number and the Supplier's advice note number.

### 10. Termination

#### 10.1

(a) Termination for Convenience: DE&S Deca may terminate the Purchase Order at any time by giving notice to the Supplier. Upon receipt of such notice, the Supplier shall immediately cease all work and, if instructed, deliver all materials and components to DE&S Deca. DE&S Deca shall pay a fair and reasonable price for all work completed up to the termination date.

(b) Termination for Material Breach: DE&S Deca may terminate the Purchase Order immediately by written notice if the Supplier commits a material breach. In such case, DE&S Deca shall have no obligation to pay for any work done up to the termination.

### 11. Indemnity and Insurance

**11.1** The Supplier shall be responsible for and indemnify DE&S Deca against all claims, proceedings, damages, costs and expense arising from or incurred by reason of:

(a) Any infringement or alleged infringement of any patent, copyright, registered design, trade mark, trade name or other intellectual property right by the use, supply or sale of the Goods and Services which DE&S Deca its clients or agents may incur or become liable for in any action for such infringement;

and (b) any personal injuries or any damage to any property tangible or intangible caused by, or in the course of, or in any way arising out of the work done by the Supplier (or his servants, agents or subcontractors) or arising from any defect in or failure of the Goods and Services.

**11.2** If the Supplier is required under the Purchase Order to perform Services at premises of DE&S Deca or its clients or agents, it shall be covered by Public Liability Insurance in respect of loss, damage or injury to person or property.

### 12. General

**12.1** The Supplier shall not assign or otherwise transfer the Purchase Order or any of its rights or obligations under it without prior written consent from DE&S Deca.

**12.2** If any part of the Purchase Order is held unlawful or unenforceable that part shall be struck out and the remainder of the Purchase Order shall remain in effect.

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**12.3** No delay, neglect of forbearance by DE&S Deca in enforcing its rights under the Purchase Order shall be a waiver of or prejudice those rights.

**12.4** Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.

**12.5** The Purchase Order shall be governed by English law (or Scottish law at the Supplier's preference if expressed at the time of Purchase Order placement) and the parties hereby submit to the jurisdiction of the English (or Scottish) Courts.

**12.6** In the event of any dispute or difference arising out of or in connection with this Purchase Order, the parties shall first seek to resolve the matter amicably through good faith negotiations. If the dispute cannot be resolved within 30 days, the parties agree to attempt to resolve the dispute by mediation in accordance with a recognised mediation procedure before commencing any court proceedings.

**12.7** Subject to the rights of third parties, all rights in the results of work undertaken in connection with the Purchase Order shall vest in the Authority and the Contractor shall not use the results of, or any information gained under, this Purchase Order for any purpose whatever without the prior written agreement of the Authority.

**12.8** The Supplier shall familiarise itself with and fully comply with the requirements set forth in DEFCON 658, as amended from time to time. Without prejudice to any other rights or remedies available, the Supplier's failure to comply with the requirements set out in DEFCON 658 may entitle DE&S Deca to terminate the Purchase Order [in accordance with Clause 6.2(a) / with immediate effect].

### **13. Records, audit and right of entry**

**13.1** The supplier shall retain all records and documents pertaining to the supplied Goods for a period of no less than three years after final payment. Such records and documents shall date back to the time the Contract and or Purchase Order was issued and shall include without limitation, Certificates of Conformity, invoices, underlying data, and inventory records. DE&S Deca shall have the right to examine, reproduce and audit all the suppliers records related to supplied product.

**13.2** Under the terms of this order Deca and or any representative of Deca/ customer or regulatory body reserve the right to access the suppliers premises to view any or all areas of their facilities, including any level within the supply chain that is involved in the order. This right is extended to all applicable supplier and sub tier supply chain records.

**13.2.1** Access may include inspection of the an item on the order, status of the item, or reviewing quality records pertaining to the purchase order in question

### **14. Sellers notice of Discrepancies**

**14.1** The Supplier shall notify DE&S Deca of any changes in product and/or process definition, and where required, obtain approval from DE&S Deca. This is to include circumstances where Product malfunctions, defects, or airworthiness issues have been reported to the Supplier by other Customers / Users of that Product under the following conditions:

- Rejection on receipt by other Customers.
- Reported In-use failures relating to the product.
- Supplier (2nd Party) audit non-conformances relating to the Product/Process.
- Subsequently reported calibration failures of in-house Test & Measurement Equipment that could have affected the delivered Product.

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**14.2** Confirmed or suspected airworthiness issues relating to the Product should be reported to DE&S Deca in the first instance by telephone or email within 24 hours of being notified to the Supplier. Any such detected or reported Product/Process non-conformities should be reported in writing within 7 calendar days to DE&S Deca at the following address:...

### **15. Supplier Approval**

#### **15.1 Supplier Approval Requirements**

The minimum quality requirement for suppliers of goods and services to Defence Electronics and Components Agency shall be Quality Management System (QMS) certification to ISO9001 by a UKAS (or equivalent) accredited certification body. This requirement guarantees the supplier has put in place a consistent QMS able to satisfy our basic needs.

### **16. Process Control and Verification**

**16.1** Defence Electronic and Components Agency require the supplier to demonstrate control through the production process. The supplier shall demonstrate confidence that the processes have been carried out as planned and therefore be able to demonstrate the conformity of those products and services.

### **17. Identification and Traceability**

**17.1** Traceability is an important factor in high end and safety critical products and is a basic requirement unless agreed in writing. Suppliers shall provide documentation that includes revision / issue nos., batch numbers, lot codes or where relevant date codes and serial numbers of goods provided.

### **18. Shelf Life**

**18.1** Goods and products containing items with finite shelf life shall have the expiry date identified on the product and the delivery documentation. The remaining shelf life must be a minimum of 80% of the total shelf life for the material at time of delivery unless otherwise specified.

### **19. Counterfeit Product Prevention**

**19.1** The definitions and rules of interpretation in this clause apply to the Order: "Suspect Counterfeit Supplies" means any Supplies that are suspected by testing, visual inspection or other information to be Counterfeit Supplies.

**19.2** "Counterfeit Supplies" means any material, component, part, assembly, sub-assembly, product and any other item forming part of the Supplies (together referred to as "Items" and separately as "Item") in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, Identity or characteristics have been misrepresented by the Supplier, manufacturer or a supplier in the Supplier's supply chain.

**19.3** "Identity" means any information which relates to the properties or characteristics of the Supplies including but not limited to the original manufacturer or suppliers, trademarks

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or other intellectual property rights, part numbers, date codes, lot numbers, applied testing methods and results, inspections performed, documentation, warranties, origin, alterations, tampering, salvage, recycling, ownership history, packaging, physical condition, previous use and rejection.

**19.4** The Supplier warrants that Counterfeit Supplies shall not be supplied to the Purchaser or installed in the Purchaser's products by the Supplier.

**19.5** The Supplier warrants that only new, unused, authentic, genuine and legitimate Items shall form part of the Supplies supplied to the Purchaser. The Supplier may only purchase or source Items directly from Original Component Manufacturers ("OCM"), OCM authorised (e.g. franchised) distributors or aftermarket manufacturers. Use, purchase or the sourcing of Items from non OCM authorised independent distributors or brokers is not permitted unless first approved in writing by the Purchaser. The Supplier must present compelling support for its request to use such non OCM authorised suppliers for the Purchaser's approval (including but not limited to OCM documentation that authenticates supply chain traceability of the parts to the OCM) and include in its request all necessary actions it shall take to ensure those Items thus procured are new, unused, authentic, genuine and legitimate Items. 19.6

The Supplier shall maintain a method of traceability that ensures tracking of the supply chain back to the manufacturer of all Items included in the Supplies being supplied. This traceability method shall clearly identify the name and location of all supply chain intermediaries from the manufacturer to the direct source of each Item for the Supplier and shall include the manufacturer's batch identification for the Item such as but not limited to date codes, lot codes, serializations, or other batch identifications. Full supply chain traceability documentation includes but is not limited to OCM, Original Equipment Manufacturer ("OEM") and authorised (e.g. franchised) Supplier certificates of conformity, purchase orders and test/inspection data and/or certificates. The Order shall specify any such additional documentation (other than as specified in this condition) required by the Purchaser. If Counterfeit Supplies or Suspect Counterfeit Supplies are supplied or furnished under the Order such Supplies shall be impounded. The Supplier shall promptly replace such Supplies.

**19.6** The Supplier shall maintain a method of traceability that ensures tracking of the supply chain back to the manufacturer of all Items included in the Supplies being supplied. This traceability method shall clearly identify the name and location of all supply chain intermediaries from the manufacturer to the direct source of each Item for the Supplier and shall include the manufacturer's batch identification for the Item such as but not limited to date codes, lot codes, serializations, or other batch identifications. Full supply chain traceability documentation includes but is not limited to OCM, Original Equipment Manufacturer ("OEM") and authorised (e.g. franchised) Supplier certificates of conformity, purchase orders and test/inspection data and/or certificates. The Order shall specify any such additional documentation (other than as specified in this condition) required by the Purchaser. If Counterfeit Supplies or Suspect Counterfeit Supplies are supplied or furnished under the Order such Supplies shall be impounded. The Supplier shall promptly replace such Supplies.

**20. Supply Chain Code of Conduct**

Our suppliers will:

- 20.1** Respect the dignity and rights of their employees and place the highest priority on ensuring the safety of each other at work and the safety of others who might be affected by their activities;
- 20.2** Seek to minimise so far as they reasonable can the impact of their activities on the environment;
- 20.3** Comply with the law and the conduct of their business;
- 20.4** Be honest in their dealings with those with whom they do or seek to do business;
- 20.5** Strive to avoid even the appearance of wrongdoing or impropriety in the way they go about their business;
- 20.6** Not bribe or attempt to bribe anyone;
- 20.7** Not take bribes from anyone;
- 20.8** Be diligent in selecting their business advisers and partners so that they minimise the risk of our reputation being damaged by others;
- 20.9** Implement and observe appropriate training and procedures designed to ensure that they and others working for them understand what this Code of Conduct means for them in practice; and
- 20.10** WILL treat seriously breaches of this Code