



TERMS AND CONDITIONS FOR PROVISION OF GOODS AND SERVICES

By placing an Order with Devonport Royal Dockyard Limited, the Customer confirms that the Customer has read, understood and expressly agrees and accepts these terms & conditions.

1 DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in these terms and conditions for provision of Goods and / or Services (the “**Agreement**”)

“**Business Day(s)**” means a day (other than a Saturday, Sunday or public holiday) in England when clearing banks in London are open for non-automated business.

“**Customer**” means the person, firm or company that purchases Goods and / or Services from the Supplier in the form of an Order.

“**Deliverables**” means those deliverables specified in the Proposal that the Supplier has agreed to deliver to or perform for the Customer as part of the supply of Goods and /or Services.

“**Delivery**” means the delivery of one or more Deliverables and/or delivery of all or any part of the Service by the Supplier to the Customer.

“**Effective Date**” means the date of the Customers Order. Where Services commence on a date prior to receipt of the Customers Order, the effective date shall be deemed to be the date on which Services first commence.

“**Force Majeure**” has the meaning set out under Clause 14.

“**Group**” means any parent, holding, or subsidiary company or companies of any tier of the Supplier and / or the Customer and their respective officers, directors, employees, servants and agents.

“**Goods**” means the Items, if any, specified in the Proposal

“**Intellectual Property Rights**” or “**IP Rights**” or “**IPR**” means intellectual property rights comprising or related to patents, registered designs, trademarks, domain names, copyright, design rights, database rights, moral rights, utility models and any other intellectual or industrial property rights of any similar or equivalent nature or forms of protection (whether registered or unregistered and whether or not such rights are capable of registration) including without limitation those subsisting in inventions, designs, drawings, computer programs, business names, goodwill, trade dress and including all applications (or rights to apply) for and renewals or extensions of such rights and any rights existing or arising in law or equity in relation to the same which may exist before, on or after the date of this Contract in any part of the world; and the term “**Intellectual Property**” or “**IPR**” shall be construed accordingly.

“**Order**” means any order placed by the customer to the supplier in accordance with the terms and conditions of this Agreement

“**Party**” and “**Parties**” means the Supplier and / or the Customer as applicable

“**Price**” has the meaning set out in Clause 3

“**Prices**” means the prices specified in the Proposal

“**Proposal**” means the Supplier proposal to the Customer for the provision of Goods and / or Services.

“**Rates**” means those rates specified in the Proposal

“**Services**” means the services specified in the Proposal

“**Supplier**” means **Devonport Royal Dockyard Limited** (Company Number 0277752) whose registered address is Devonport Royal Dockyard, Plymouth, Devon, PL1 4SG.

“**Trade Control Laws**” means any and all export, import and trade control laws and regulations, including *inter alia* the International Traffic in Arms Regulations (ITAR), where applicable to the Goods and or Services provided under the Agreement.

1.2 The Customer shall place and the Supplier shall accept Customer Orders for Goods and / or Services provided under this Agreement. In case of any inconsistency or contradiction between the Order and the Agreement then the terms and conditions of the Agreement shall take precedence and prevail over any conflicting terms or conditions contained in or referred to in the Order, confirmation of Order, specification, NDA (Unless stated herein), implied by law, trade custom, practice or course of dealing.

1.3 Clause and paragraph headings shall not affect the interpretation of this Agreement.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.5 References to clauses are to the clauses of this Agreement (“**Clause**” or “**Clauses**”).

1.6 No addition to, variation of or exclusion of any term of the Agreement shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

2 SCOPE OF WORK

Supplier shall supply and / or perform Goods and / or Services as described in the Proposal.

3 RATES AND PRICES

Customer agrees to pay Supplier at the Rates and / or Prices stated in the Proposal (together referred as the “**Price**”) for providing the Goods and / or Services listed therein.

4 ADDITIONAL SERVICES

Should the Customer require any additional goods and / or services not listed in the Proposal, Supplier shall be requested by the Customer to submit a new proposal for the additional goods and / or services. Where Supplier and Customer agree to such provision, Customer agrees to pay Supplier for all such additional goods and / or services performed based on the prior written instructions of Customer at a Price agreed therefor. Such additional goods and / or services shall be confirmed in writing either by formal amendment to this Agreement or by creation of a new agreement as mutually agreed between the Parties.

5 CUSTOMER OBLIGATIONS

5.1 Customer shall be responsible for providing:-

- i) Customer liaison point of contact for any inspection, sign off and acceptance activities as agreed / required in the Proposal.
- ii) all data, documentation and information necessary for the completion of the Services, made available to the Supplier in a timely manner, within an agreed programme of work where applicable.
- iv) access to Customer's premises, facilities, equipment and personnel, and where applicable to same of their third party supplier(s), as applicable and as and when reasonably required by the Supplier for the performance of the Services

5.2 Customer represents and warrants to Supplier that all / any facilities, equipment, data, documentation and information to be supplied or provided by the Customer, necessary for the performance of the Services by the Supplier will be in good and proper condition and available in a timely and appropriate manner for the Services to be performed by Supplier.

5.3 Should the Customer be unable to meet any of its obligations as outlined in this Clause 5 that are required in order for the Supplier to meet its own obligations under this Agreement, the Customer hereby agrees that;

- i) any dates, milestones or any other period indicated and agreed for the Supplier to complete its obligations shall automatically be

extended by a period of time equivalent to that for which Supplier Performance is prevented; and,

- ii) Supplier shall be entitled to invoice the Customer for additional rates for the period for which Supplier resources are affected by the Customer delay where such resources are not reasonably able to be used elsewhere (the "**Bench-rate**"). The Bench-rate if applicable may be outlined in the Proposal. Notwithstanding, the Supplier shall be obligated to reasonably mitigate any losses caused by Customer delay.

6 TERM

- 6.1 The term of this Agreement shall be for the period required for Supplier to complete the activities described in the Proposal.
- 6.2 Either Party shall have the right to terminate the Agreement prior to completion of the Services on thirty (30) days written notice. Customer shall pay Supplier for the Services performed prior to the date of termination, including but not limited to the performance of such Services and any Supplier committed cost of the Services contracted including the costs of any Goods purchased by Supplier to support the Services.

7 LIABILITY AND INDEMNITY

- 7.1 Notwithstanding any other provision of this Agreement neither Party nor any member of the Company Group or the Supplier Group, shall be liable under or in connection with this Agreement, whether in contract, in tort (including negligence), under any statute or otherwise, (in all cases) for or in respect of any indirect or consequential or economic losses of whatever nature including, but not limited to, loss of profit, loss of revenue, exclusion, loss of use, downtime, loss of production, increased cost of working, loss of contract or business interruption regardless of cause and whether or not reasonably foreseeable, reasonably contemplated, or actually contemplated by the Parties at or after the Agreement Effective Date and each Party hereby releases the other Party and its Group in this regard.
- 7.2 Subject to Clause 7.1 and without prejudice to any obligations of the Supplier to pay any amounts properly payable under this Agreement and to the maximum extent permitted by law, the total aggregate liability of the Supplier and its Group for all matters and claims arising under or in connection with the Agreement in contract, in tort (including negligence), under strict or statutory liability, for termination or otherwise (including any obligation to make a payment under any indemnity) shall be limited to an amount equal to 10% of the total aggregate Price payable under this Agreement.
- 7.3 Nothing in this Agreement shall limit or exclude any liability for death or personal injury resulting from negligence or limit or exclude any liability for fraud, fraudulent misrepresentation, or wilful misconduct or any other liability which cannot be lawfully excluded.
- 7.4 Customer shall be responsible for and shall indemnify and hold the other Supplier and its Group harmless from and against any and all loss of or damage to its own property or equipment and that of their respective subcontractors of whatever tier, and regardless of cause. For the purposes of this clause, property and equipment of Customer's customer and any other intermediary party up to and including the end user shall be deemed to be the property of Customer.
- 7.5 The Contracts (Rights of Third Parties) Act 1999 shall apply to the Agreement only to the extent of Supplier's Group and /or Customers Group activities that are solely and exclusively connected to this agreement. Notwithstanding, other than as set out in or described in this Clause 7.5 a person or entity who is not a Party to this Agreement, shall not have any rights under the contracts (rights of third parties) act 1999 to enforce any provision term or clause of this agreement, and the Parties may mutually rescind or vary any term of the Agreement without the consent of any third party, even if as a result thereof that any Supplier Group or Customer Group rights to enforce a term of the Agreement would be varied or extinguished.

8 INSURANCE

- 8.1 Supplier shall for the duration of the Agreement maintain the following insurance:-

- i) Employer's liability insurance with coverage and limits in accordance or excess of statutory obligations.
 - ii) General third party liability insurance in the amount of £1,000,000 GBP in any one occurrence and £10,000,000 GBP in aggregate.
- 8.2 The Supplier shall, upon receipt of the written request of the Customer, provide the customer with evidence of the above policies.

9 TAXES

- 9.1 Supplier's Price is subject to the addition of all duties and taxes (including where applicable Value Added Tax at the rate ruling at the relevant tax point).
- 9.2 Should any Value Added Tax or any other tax, duty, fee or similar charge in substitution therefor be or become payable in respect of the Goods and / or Services, the same will be paid by the Customer or (as the case may be) the Supplier shall be reimbursed by the Customer upon Supplier's first written demand.

10 INSPECTION AND ACCEPTANCE

- 10.1 The Supplier shall carry out and / or support acceptance activities for the Services as required and defined in the Proposal. Any additional acceptance activities that are required by the Customer and not listed in the Proposal shall be to the Customer's account and shall not form the basis for acceptance of the Services performed by the Supplier unless otherwise agreed in writing.
- 10.2 Where Customer Delivery is taken of Services without formal acceptance of such services being required by Customer (as applicable and as agreed in accordance with the Proposal), such Services shall be deemed to have been accepted by the Customer upon notification of Delivery by the Supplier.
- 10.3 Subject to any acceptance activities outlined in the Proposal, where the Customer reasonably believes that that the Services are not in accordance with the Agreement, or contain errors, the Customer shall notify the supplier in writing within five (5) Business Days following receipt of such Services, or such other period agreed and stated in the Proposal.
- 10.4 If the Customer fails to give such notice identified in Clause 10.3 the Services shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be reasonably apparent on Delivery of the Services and the Customer shall be deemed to have accepted the Services accordingly.
- 10.5 In the event that the Customer establishes to the Supplier's reasonable satisfaction that the Services do not conform with the Proposal or are so defective, the Customer's sole remedy in respect of such non-conformance or defects shall be limited as the Supplier may elect at its sole discretion to correct the Services or partially refund that proportion of the Price against those elements of the of the Services not satisfactorily Delivered. For the avoidance of doubt The Customer may not partially accept any element of the Services and reject any other element unless agreed in writing by the Supplier.

11 WARRANTY

- 11.1 Supplier will use its judgement in making recommendations and suggestions as to how Services should be performed and will perform Services in a good and workman-like manner in accordance with any operating instructions provided by Customer and Customer shall have the right to inspect the Services as it progresses and at its conclusion.
- 11.2 Where Services comprise consultancy services, including documentation, training or any other services, the Supplier does not provide warranty. Correction of errors would be undertaken in accordance with Clause 10 above unless specified otherwise in the Proposal.
- 11.3 All conditions, warranties, and representations or other terms expressed, implied, statutory, or otherwise in respect of quality, state and condition, fitness for purpose, durability, safety and freedom from defects, skill and care or otherwise are hereby excluded to the maximum extent permissible by law. Supplier accepts no responsibility or liability for any defect (latent or otherwise) which may exist in Customer, or Customer's client

supplied materials, equipment or services. The liability of the Supplier under this Clause shall in no event exceed ten percent (10%) of the Order Price notwithstanding the negligence of Supplier.

12 TITLE & RISK

12.1 No rights of possession, copyright, licenses and free right of use of data, drawings, reports or other documentation including electronic information are granted by Supplier unless stated otherwise in the Proposal.

12.2 Title in Goods shall not pass to the Customer until Supplier has been paid in full for the Goods.

12.3 Risk in Goods shall pass to Customer upon receipt of the goods.

13 PAYMENT

13.1 Subject to clause 10, on the acceptance by the Customer of completion of the Services performed by Supplier, or upon Delivery of Goods and / or Services by Supplier to Customer, the Supplier shall prepare invoices covering Services performed in accordance with the Price contained in the Proposal and the Order. Invoices shall be payable by Customer within thirty (30) days from date of invoice.

13.2 Notwithstanding any contrary provisions in this Agreement, Supplier shall not be obliged to proceed with Services for so long as any sum payable to Supplier has become due but remains unpaid by Customer.

13.3 Customer agrees to pay interest on any unpaid balance from the date payable until paid at the rate of 4% above current base rate of the Bank of Scotland.

13.4 The Supplier shall have the right to maintain an action for the Price notwithstanding that title in the Goods and or Services may not have passed to the Customer and shall have a lien over any goods, materials, equipment, data, documentation, information or other goods that may be the property of the Customer, or the Customer's third party supplier, in the Supplier's possession against payment in full of all sums due at any time under any Contract.

14 FORCE MAJEURE

14.1 The Supplier shall not be considered liable for any delay in performing its obligations or failure to perform its obligations in respect of this Agreement or any Order if such delay or failure results from any event of Force Majeure. "Force Majeure" shall include but not be limited to: war, declared or undeclared, acts of God, acts or omissions of Customer, insurrection, acts of Government or rulers of people, boycotts, strikes, lockouts or other industrial disturbances, explosions, riot, rebellion, epidemics, landslides, lightning, earthquakes, fires, storms, floods and washouts and any other causes not within the reasonable control of the Party affected.

14.2 In any Force Majeure event the affected Party shall promptly give notice to the other Party including details of the Force Majeure event including the commencement date, the nature of the delay and its expected duration. In case of such a Force Majeure event the time for performance of the obligation of the affected Party, where reasonably possible, shall be extended by a period equivalent to that during which the performance is prevented. If such Force Majeure event persists for longer than Three (3) months after such event is first notified in writing, either Party may terminate the Agreement or the Order by giving 7 Business Days' notice to the other Party.

14.3 The Customer shall remain liable for any outstanding sums incurred and/or owed prior to the Force Majeure event, as a result of termination under clause 14.2.

15 COMPLIANCE

Supplier agrees to comply in all respects with all laws, rules and regulations and order of government applicable to the Goods and / or Services, including *inter alia* laws rules and regulations regarding employment, trade controls, anti-bribery & corruption, data protection any other relevant laws rules or regulations, in force on or after the Agreement Effective Date.

16 GOVERNING LAW AND DISPUTE RESOLUTION

16.1 This Agreement shall be governed and construed in accordance with the laws of England and the jurisdiction of the English courts.

16.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Clause. The tribunal shall consist of a sole arbitrator appointed by the London Court of International Arbitration.

16.3 Neither party shall have any remedy in respect of this Agreement, any Contracts, nor the termination of either, except as expressly provided for in this Agreement or any Contract.

17 SAFETY

Where work is to be undertaken by the Supplier at either the Customer's or the Customer's third party contractors' premises, Customer shall ensure and be responsible for providing a safe place of work under H&S Regulations, and take all reasonable steps to ensure regulations are met by third party contractors.

18 ASSIGNMENT

Neither Party shall have the right to assign, transfer or change all or part of this Agreement without the prior written consent of the other Party, of which such consent shall not unreasonably be withheld.

19 INTELLECTUAL PROPERTY RIGHTS

19.1 The Customer shall indemnify Supplier against any claim, cost or expense including without limitation, legal fees alleging infringement of trademarks, trade names, patents, copyrights, registered designs or any other IPR which arises as a result of Supplier's compliance with the Customer's specification, designs and/or instructions.

19.2 The Customer shall notify Supplier forthwith of any claim that the sale or use of the Services, Goods materials or equipment infringes any IPR and the Customer shall give authority, information and every reasonable assistance to the Supplier for the defence of any such claim and shall not itself admit, handle, deal with or compromise any such claim except with the written consent of the Supplier.

19.3 The Customer shall comply with all instructions of Supplier and all legislation in relation to the processing, storage and use of the Services, Goods materials or equipment. Supplier may without liability cancel or suspend any deliveries or installation or any of the Services goods materials or equipment which have become the subject of a claim by a third party alleging infringement on any IPR.

19.4 The Agreement does not grant the Customer or any third party any licence of any kind, express or implied, under any IPR for any Goods or any product, process, design or installation of which form part of and which are the subject of the Services goods materials or equipment, nor does the sale or supply of supporting information imply the Services, Goods, materials or equipment do not infringe a third party's intellectual property right.

19.5 Subject to clause 19.6 below and any third party rights, where applicable, all IPR created as a result of the work undertaken by the Supplier, its agents or subcontractors for the purpose of the Agreement and / or the Order (the "**Results**") shall vest in the Customer unless otherwise agreed and stated in the Proposal.

19.6 To the extent it is not prevented by doing so the Customer grants the Supplier a non-exclusive, non-transferrable, royalty-free, worldwide licence (Including right to sublicense) to use, reproduce, modify, adapt and develop IPR created as a result of the work undertaken by the Supplier, its agents or subcontractors for the purpose of the Agreement and / or the Order.

19.6 Any and all Supplier Background IPR shall remain vested in and be the absolute property of the Supplier or its third party supplier as the case may be.

20 IPR INFRINGEMENT

Supplier shall, upon receipt of written request from Customer, indemnify Customer from any damages assessed against Customer by any court of final jurisdiction in respect of suits for patent or other IPR infringement filed against Customer and undertake the defence of such suits, wherein the alleged patent infringement is based upon material, equipment, and tools furnished and used and processes performed by Supplier under this Agreement except where such infringement arises out of Customer's instruction or specifications, provided that Customer shall give Supplier:

- i) prompt written notice of the commencement or threat of commencement of such suit,
- ii) all co-operation necessary in connection with any such suit, and
- iii) the right to control the defence of and any negotiations for settlement of such suit as well as any appeals and any ancillary litigation deemed necessary by Supplier.

21 CONFIDENTIALITY

Where the Supplier and Customer have entered into a prior Non-Disclosure Agreement (the "NDA") the Parties agree to automatically extend the duration of the NDA for the Term of this Agreement (as given in Clause 6). The Terms and Conditions of the NDA shall take precedence over any conflicting Terms and Conditions outlined in this Clause 21.

Where no NDA is in place between the Parties, the following conditions of Clause 21 apply:

21.1 Supplier and Customer undertake to keep all information including but not limited to records, data, reports and documents obtained by either Party from or in connection with operations under this Agreement strictly confidential and to obtain similar undertakings from any person employed or retained by it.

21.2 The above obligation of confidentiality shall not extend to information which:

- i) is known to Supplier prior to receipt from Customer;
- ii) is disclosed to Supplier by a third party under no obligation of confidence to Customer and having a right to disclose such information; or
- iii) is or shall become part of the public domain through no fault of Supplier.
- iv) was independently developed by Supplier.
- v) is required to be disclosed pursuant to any rule, order, or law from a government or regulatory body.

21.3 Notwithstanding the above, Supplier shall retain the right to disclose general information about the Agreement unless notified otherwise by Customer.

22 NOTICES

Any notice required or permitted under the terms of this Contract or required by statute, law or regulation shall (unless otherwise provided) be in writing and will be sent by registered mail (pre-paid first class post or recorded delivery) or by email to the respective Parties at their registered offices or such addresses as may have been notified to the other Party for that purpose.

23 SEVERABILITY

If any provision (or portion thereof) of this Agreement shall be declared invalid or unlawful, the remaining provisions shall not be affected thereby, and this Agreement shall be construed as if such invalid or unlawful provision (or portion thereof) had never been contained therein.

24 NON WAIVER

Neither of the Parties right to require strict performance in accordance with the terms of this Agreement shall be affected or waived by any failure by it to enforce any of the terms hereof.

25 NON SOLICITATION

Neither Party shall during the term of this Agreement or for the first six (6) months following its expiry, termination or determination, make an offer of employment (or an offer for services) to any member of the other Party's staff engaged on the project without that other Party's prior consent in writing. If either Party is found to be in default of this condition, the agreed pre-estimate of loss for which the Party in breach shall pay the other Party by way of damages shall be 100% of the annual salary of the related member of staff.

26 TRADE CONTROLS

In performing their respective obligations under the Agreement or the Order, the Parties shall comply in all respects with any and all applicable Trade Control Laws. In the event that any aspect of the Agreement (which includes the Proposal and the Order) which the Supplier will be required to access under the Order could be deemed to be military technology under the International Traffic in Arms Regulations (ITAR) the Customer shall immediately notify the Supplier in writing and secure the necessary licenses to enable the Suppliers performance of the Agreement and/or the Order. Notwithstanding anything to the contrary the Customer shall defend, indemnify and hold the Supplier and any of its affiliates, agents, subcontractors, representatives harmless in full and on demand and keep them so indemnified from and against all and any costs, claims, damages, penalties, fines, actions, proceedings, losses, liabilities, damages (including legal costs and expenses) which are incurred or suffered by the Supplier or any of its affiliates, agents, subcontractors or representatives resulting directly or indirectly as a result of any act or omission of the Customer in performing their obligations under this Clause 26.

27 CODE OF CONDUCT

27.1 The Parties shall at all times:

- i) Comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption (Relevant Requirements), including but not limited to the Bribery Act 2010;
- ii) Have and maintain in place throughout the term of this Agreement their own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, designed to ensure compliance with the Relevant Requirements;
- iii) Not do, or omit to do, any act that will cause or lead any other Party to be in breach of any of the Relevant Requirements;
- iv) Promptly report any request or demand for any undue financial or other advantage of any kind received in connection with this Agreement

27.2 The Parties warrant and represent that they:

- i) Have not been or are not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
- ii) If applicable, have not been or are not listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

28 ENTIRE AGREEMENT

This Agreement, which includes the Order, contains all the terms and conditions agreed upon by the Parties in relation to its subject matter and supersedes any standard conditions of purchase, any other terms & conditions and all prior agreements, understandings and undertakings, whether verbal or written.

29 SHARPCLOUD SERVICES

All SharpCloud services are subject to the following terms of service: <https://www.sharpccloud.com/terms>