



# **SubSea Craft US (Operations) Inc. and SubSea Craft US, Inc. General Terms and Conditions of Purchase**

## 1 Interpretation and Definitions

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Affiliate:** in relation to a party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with that party from time to time.

**AI Systems:** any software or hardware system that uses machine learning, deep learning, natural language processing, or any other form of artificial intelligence.

**Background IP:** all Intellectual Property Rights, technical know-how, information, data, materials, methods and processes owned by or licensed to a party at the date of the Contract (other than as licensed by the other party), and any Intellectual Property Rights, technical know-how, information, data, materials, methods and processes developed or acquired by that party after the date of the Contract that are not Foreground IP.

**Business Day:** a day other than a Saturday, Sunday or day on which commercial banks in Virginia are authorised or required by law to close, when commercial banks in Richmond, Virginia are open for business.

**Client:** is a customer of the Customer.

**Commencement Date:** has the meaning given in Condition 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Condition 29.9.

**Contract:** the contract between the Customer and the Supplier for the supply of Goods and/or Services consisting of the Order and any other documentation referenced therein, the Goods Specification, the Service Specification and these Conditions.

**Control:** in relation to a body corporate ("company A"), means the power of a person to secure (a) by means of the holding of stock or the possession of voting power in relation to that or any other body corporate, or (b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of company A are conducted in accordance with that person's wishes or, in relation to a partnership, means the right to a share of more than half the assets, or of more than half the income, of the partnership, and the expression change of Control shall be construed accordingly.

**Customer:** SubSea Craft US (Operations) Inc. registered in Delaware with file number 10616462 with its principal place of business at 4525 Main Street (Suite 710), Virginia Beach, VA 23462 or SubSea Craft US, Inc. registered in Delaware with file number 7572163 with its principal place of business at 4525 Main Street (Suite 710), Virginia Beach, VA 23462 as specified on the Order.

**Customer's Background IP:** that part of the Customer's Background IP which the Customer licenses to the Supplier in connection with the Goods and/or Services in accordance with Condition 10.2, including the Customer Materials.

**Customer Materials:** means all documents, information, software and other materials (whether owned by the Customer or a third party) that are provided by the Customer to the Supplier in connection with the Contract.

**Data Protection Laws:** means any privacy or data protection laws, regulations, regulatory requirements, guidance and codes of practice applicable to the Contract, including but not limited to federal and state laws.

**Deliverables:** all documents and materials developed by the Supplier or its subcontractors or their agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Location:** has the meaning given in Condition 4.2(b).

**Foreground IP:** any Intellectual Property Rights that arise or are obtained or developed by a party specifically in the course of or in connection with the provision of the Goods and/or Services.

**Goods:** the goods (or any part/component of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** all inventions (whether patentable or not), patents, utility models, petty patents,

registered designs, design rights, database rights, copyright and related rights, moral rights, rights in software, semiconductor topography rights, trade marks, service marks, logos, get up, trade names, business names and domain names (in each case whether registered or unregistered) and including any applications for registration and any renewals or extensions of any of the foregoing, and, in each case, the goodwill attaching to any of the foregoing, rights to sue for passing off or for unfair competition, all know how, confidential information, trade secrets and other matter capable of being the subject of intellectual property rights and any rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which subsist anywhere in the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

**Services:** the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the Customer and the Supplier.

**Software:** means any software program which is comprised or included in or related to the Goods and/or Services, including as applicable any source code or object code in such program and all other works or materials recorded or embedded in the program including any audio or visual content in any screen displays or user interfaces and all user guides or manuals for the program in any format.

**Supplier:** the person or entity from whom the Customer purchases the Goods and/or Services.

**Supplier's Background IP:** that part of the Supplier's Background IP which the Supplier or its subcontractors are authorised to use in connection with the provision of the Goods and/or Services.

**Supplier Code of Conduct:** means the Customer's code of conduct for suppliers, as published on the [Customer's Website](#) from time to time, which sets out the ethical, legal and compliance standards applicable to suppliers to the Customer, including requirements relating to business ethics, anti-bribery and corruption, cybersecurity, human rights and modern slavery, tax evasion, data protection and privacy, and environmental and social responsibility.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the **terms including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

## 2. Basis of contract

**2.1** The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

**2.2** The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence ("**Commencement Date**").

**2.3** The Supplier's acceptance is expressly limited to acceptance of the Order, which incorporates these Conditions.

**2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. No written or printed terms inconsistent with or additional to these Conditions shall be binding upon the Customer unless agreed in writing by an authorised representative of the Customer.

**2.5** All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

**2.6** The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

### **3. Supply of Goods**

**3.1** The Supplier shall ensure that the Goods shall:

- (a) be supplied exactly in accordance with the Contract and any Goods Specification, drawing, process instruction or procedure defined therein. No variation to the Contract shall be permitted other than in accordance with Condition 29.9;
- (b) be merchantable (within the meaning of the Uniform Commercial Code) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (c) where they are manufactured Goods, be free from defects in design, materials and workmanship and remain so for thirty-six (36) months after delivery of the relevant shipment;
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (e) be free and clear of all liens, security interests or other encumbrances;
- (f) not breach any export controls, sanctions or other applicable laws and regulations; and
- (g) not display on any part of the Goods any marking not authorised by the Customer except for the Supplier's standard labelling of the Goods, the manufacturer's name, address and reference number, the date of manufacture, safety information and any other information relating to the function of the Goods usually incorporated by the manufacturer.

The warranties in this Condition 3.1 shall survive delivery, inspection, acceptance and payment of the Goods.

**3.2** The Supplier shall include on all invoice paperwork for each shipment accurate and complete information regarding the country of origin for all parts, components, or materials supplied under the Contract. Additionally, the Supplier shall, upon request by the Customer, promptly provide any further documentation or information necessary to verify the country of origin of the supplied Goods, which may include a formally endorsed certificate or declaration of origin, produced and issued at the expense of the Supplier. Country of origin is defined as the country where a part, component, or material was wholly obtained, produced, manufactured, or assembled, or underwent its last substantial transformation. Any failure to comply with this Condition 3.2 shall be deemed a material breach of the Contract.

**3.3** The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, accreditations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods, together with cybersecurity accreditation in accordance with Condition 27.1.

### **4. Delivery of Goods**

**4.1** The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach the Delivery Location in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier;
- (d) a signed Certificate of Conformity accompanies each shipment and contains the following information: date, Supplier name, Supplier's authorised signature and title, Order number, part number, revision, quantity, any Special Processes (as set out at Condition 25.3), any concession number pursuant to the procedure at Conditions 25.10 and 25.11, and a statement certifying product compliance and traceability; and

- (e) where the Supplier is a material stockist or component distributor, the Original Equipment Manufacturer (OEM)'s Certificate of Conformity as a minimum.

The Customer may reject any delivery not accompanied by the documentation required under this Condition 4.1.

**4.2** The Supplier shall deliver the Goods DDP (Incoterms 2020):

- (a) on the date specified in the Order unless advised otherwise in writing by an authorised representative of the Customer;
- (b) to the location set out in the Order or as instructed in writing by an authorised representative of the Customer before delivery ("**Delivery Location**"); and
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

**4.3** The Supplier acknowledges that time is of the essence in relation to all dates and timescales for the provision of the Goods.

**4.4** Delivery of the Goods shall be completed on arrival of the Goods at the Delivery Location, with customs import clearance paid by the Seller, ready for unloading by the Customer. Delivery of the Goods shall not constitute acceptance for the purposes of the Contract.

**4.5** Any Goods rejected by the Customer on delivery shall be returnable at the Supplier's risk and expense. Neither delivery nor any failure by the Customer to reject the Goods at the time of delivery shall be deemed to be an acceptance of any defects that might exist in the Goods at the time of delivery. The Customer shall be entitled to inspect and test the Goods within a reasonable period after delivery.

**4.6** If the Supplier delivers less than the quantity of Goods ordered, the Customer may (at its option) accept the shortfall, in which case the Supplier shall make a pro rata adjustment to the invoice for the Goods. If the Supplier delivers **more** than the quantity of Goods ordered, the Customer shall not be deemed to have accepted the excess Goods by reason of accepting delivery. The Customer may, at its sole and absolute discretion: (a) reject the excess Goods and require the Supplier to collect them at the Supplier's cost and risk; or (b) accept the excess Goods, in which case the parties shall agree an appropriate adjustment to the invoice.

**4.7** The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in Condition 6.1.

**4.8** Risk in the Goods will pass to the Customer only once the Goods have been unloaded and accepted at the Delivery Location. Title to the Goods will pass to the Customer upon payment to the Supplier. Notwithstanding the above, the Customer may use or sell the Goods in the ordinary course of its business before payment is made.

**5. Supply of Services**

**5.1** The Supplier shall from the Commencement Date (or such other date(s) as specified in the Order or Service Specification) for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

**5.2** The Supplier acknowledges that time is of the essence in relation to all dates and timescales for the performance of the Services and shall meet all performance dates for the Services as specified in any Order or otherwise notified by the Customer to the Supplier.

**5.3** In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel (i) who are suitably skilled and experienced to perform the tasks assigned to them, (ii) in sufficient number and with appropriate supervision and (iii) in possession of any applicable security clearances required; to ensure full and timely performance of the Supplier's obligations under the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables are fit for any purpose expressly or impliedly made known to the

Supplier by the Customer;

- (e) provide all equipment, tools, vehicles and other items required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, are free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences, permissions, authorisations, accreditations, consents and permits required for the provision of the Services, including cybersecurity accreditations in accordance with Condition 27.1;
- (h) observe all health and safety rules, regulations and any other security requirements that apply at any Customer premises;
- (i) hold all Customer Materials as bailee, in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use them *e x c e p t* in accordance with the Customer's written instructions. Customer Materials shall remain the property of the Customer and must be clearly marked and stored separately from the Supplier's property;
- (j) not do or omit to do anything that may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act upon the Services;
- (k) promptly notify the Customer in writing of any actual or anticipated delay, issue or failure to perform the Services in accordance with the Contract, providing full details and proposed remedial actions;
- (l) provide regular progress reports, status updates and any information reasonably required by the Customer to monitor the Supplier's performance;
- (m) not subcontract any part of the Services without the Customer's prior written consent, and remain fully responsible for the acts and omissions of any approved subcontractors; and
- (n) meet all service levels, performance metrics and KPIs set out in the Contract or otherwise notified by the Customer.

## 6. Customer Remedies

**6.1** If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies (at its discretion):

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
- (e) to claim damages for any additional costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates; and/or
- (f) claim or deduct 5% of the price of the Goods and/or Services for each week's delay in each case by way of liquidated damages, until the earlier of delivery of the Goods or performance of the Services, as applicable, or termination or abandonment of the Contract by the Customer, up to a maximum of 20% of the total price of the Goods (in respect of late delivery of the Goods) and/or the Services (in respect of late performance of the Services).

**6.2** If the Supplier has delivered Goods that do not comply with the undertakings set out in Condition 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies (at its discretion), whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute Goods from a third party; and/or
- (f) to claim damages for any additional costs, losses or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with Condition 3.1.

**6.3** If the Supplier has supplied Services that do not comply with the requirements of Condition 5.3 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and/or
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with Condition 5.3.

**6.4** These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

**6.5** The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7. Customer's obligations**

**7.1** The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;
- (b) provide such necessary information for the provision of the Goods or Services as the Supplier may reasonably request;
- (c) use reasonable endeavours to provide any Customer dependencies or decisions required for the Supplier to provide the Goods or perform the Services, but shall not be liable for delays or failures caused by circumstances outside its reasonable control;
- (d) not be obliged to provide any Customer Materials, facilities or assistance other than those expressly stated in the Contract;
- (e) ensure that information it provides is accurate to the best of its knowledge, although the Supplier remains responsible for verifying information and assumptions necessary for providing the Goods or performing the Services;
- (f) not be responsible for the Supplier's failure to provide the Goods or perform the Services unless such failure is directly caused by the Customer's breach of the Contract; and
- (g) provide approvals or decisions within a reasonable time, provided that a failure to do so shall not relieve the Supplier of its obligations under the Contract unless expressly agreed in writing.

## **8. Charges and Payment**

**8.1** The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage (including import and export clearance) of the Goods. No extra charges shall be effective unless agreed in writing by the Customer.

**8.2** The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

**8.3** In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services (or as otherwise set out in the Order or Service Specification). Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Order number.

**8.4** In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the undisputed invoiced amounts within 30 days of the date of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier. The invoice in duplicate must be forwarded to the Customer's Financial Accounts Department at the postal address on the Order, unless otherwise stated.

**8.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of sales, use or excise taxes chargeable from time to time. Where any taxable supply is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid tax invoice from the Supplier, pay to the Supplier such additional amounts in respect of sales, use or excise taxes as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

**8.6** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

**8.7** The Customer may at any time set off any amount the Supplier owes to the Customer against any amount the Customer owes to the Supplier, regardless of when the amounts arise, whether they are fixed or still to be determined, and whether or not they arise under this Contract. If the amounts are in different currencies, the Customer may convert either amount at a market exchange rate for the purpose of set-off. Any exercise by the Customer of its rights under this Condition shall not limit or affect any other rights or remedies available to the Customer under this Contract or at law.

**9. Software**

**9.1** If the Goods and/or Services include Software, the Supplier acknowledges that the Customer may be selling or otherwise supplying the same to Clients and warrants that it has full right and authority to license and sublicense the Software to the Customer and its Clients on the terms set out in the Contract.

**9.2** The Supplier grants the Customer a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual licence (with the right to sublicense to Clients) to market, resell, supply and otherwise exploit the Software and any accompanying hardware either alone or as part of a package.

**9.3** The Supplier shall provide the Customer, at no additional cost, with all updates, upgrades, patches, bug fixes and new releases of the Software made generally available during the term of the Contract, and to allow it to provide a copy of them to those of its Clients who hold an original copy version.

**9.4** The Supplier shall provide the Customer with such technical advice, assistance, data, and documentation, including source code where necessary, to enable support and maintenance of the Software where the Supplier is itself unable or unwilling to provide such support and maintenance.

**9.5** The rights granted under this Condition 9 shall survive the termination or expiry of the Contract.

**10. Intellectual Property Rights**

**10.1** The Customer shall retain all right, title and interest in and to the Customer's Background IP and Customer Materials, other than as expressly provided for pursuant to Condition 10.2.

**10.2** The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use and copy

such of the Customer's Background IP and Customer Materials as are provided by the Customer to the Supplier solely for the term of the Contract and solely to the extent required by the Supplier to provide the Goods and/or Services to the Customer. The Supplier shall not use the Customer's Background IP or the Customer Materials for any purpose other than the performance of the Contract, nor incorporate them into any materials, products or services provided to a third party.

- 10.3** The Supplier shall retain all right, title and interest in and to the Supplier's Background IP, other than as expressly provided for pursuant to Condition 10.4.
- 10.4** The Supplier grants to the Customer a fully paid-up, worldwide, sub-licensable, non-exclusive, royalty-free, perpetual and irrevocable licence to use the Supplier's Background IP to the extent required for the Customer (or its sub-licensees) to use, operate, maintain, support, market, sell, offer for sale, import, own or otherwise exploit the Goods and/or Services and the Foreground IP. This license shall include without limitation, the right to reproduce, adapt, modify and incorporate the Supplier's Background IP into manuals, instructions, technical documentation, specifications, training materials and other materials relating to the Goods or Services or Customer's products, and to distribute such materials to Clients, end users and other authorised third parties in connection with the Customer's and its Affiliates' business. For the avoidance of doubt, this licence shall apply to any Supplier Background IP that is embedded in, combined with or necessary for the use of the Goods, Services or Foreground IP, and shall survive expiry or termination of the Contract.
- 10.5** The Foreground IP shall vest in and be solely and exclusively owned by the Customer upon creation. In furtherance of the foregoing, the Supplier shall create all Foreground IP as work made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Foreground IP does not qualify as, or otherwise fails to be, work made for hire, the Supplier shall, and hereby does: (i) assign, transfer, and otherwise convey to the Customer, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Foreground IP and all rights therein; and (ii) irrevocably waive any and all claims the Supplier may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Foreground IP.
- 10.6** The Supplier shall ensure that any third party owned or licensed Intellectual Property Rights incorporated into the Foreground IP are licensable to the Customer and its Clients on the same basis as set out in this Contract. If the Supplier is not able to grant such rights to the Customer and its Clients, it shall notify the Customer in writing of the issue and shall not include any such third-party Intellectual Property Rights in the Foreground IP without the written approval of the Customer to the terms on which such third-party Intellectual Property Rights shall be licensed to the Customer.
- 10.7** The Supplier grants to the Customer a fully paid-up, worldwide, sub-licensable, non-exclusive, royalty-free, perpetual and irrevocable licence to use and modify the Goods for purposes including (without limitation) the development, manufacture, use, sale, offer for sale, importation, ownership or other exploitation of the Customer's products from time to time.
- 10.8** The Supplier shall ensure that its subcontractors shall assign to the Customer all Foreground IP vested in the Supplier's subcontractors from time to time.
- 10.9** The Supplier shall execute and sign all such instruments, applications and documents, and do all such acts and things as may reasonably be required by the Customer in connection with the rights granted to it by this Condition 10.
- 10.10** The Supplier warrants that the possession and use of the Goods and/or the Services will not infringe the Intellectual Property Rights of any third party.

## **11. Indemnity**

- 11.1** The Supplier shall indemnify, defend and hold harmless the Customer on demand against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- (a) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services including any Foreground IP and any Supplier Background IP licensed under the Contract (excluding the Customer Materials);
  - (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
  - (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 11.2** If any claim of infringement is made or is likely to be made, the Supplier shall, at its own cost and without prejudice to the

Customer's rights under this Condition 11, promptly:

- (a) procure for the Customer the right to continue using the affected Goods and/or Services; or
- (b) modify or replace them so that they become non-infringing without materially reducing functionality; or
- (c) if neither of the options in Condition 11.1(a) nor 11.1(b) is reasonably available, refund all sums paid in respect of the affected Goods and/or Services.

**11.3** This Condition 11 shall survive termination of the Contract.

## **12. Insurance**

**12.1** During the term of the Contract and for a period of seven (7) years thereafter, the Supplier shall maintain in force with a reputable insurer: professional indemnity insurance and commercial general liability (including product liability) insurance to cover its liabilities that may arise under or in connection with the Contract.

**12.2** The Supplier shall, on the Customer's request, provide evidence of such insurance, including certificates and receipts for the current year's premiums, and shall notify the Customer immediately of any lapse, cancellation or material change to the cover.

**12.3** Nothing in this Condition 12 shall limit the Supplier's liability under the Contract.

## **13. Confidentiality**

**13.1** Each party undertakes that it shall not, at any time during the Contract or for a period of five (5) years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business or affairs of the other party or its Affiliates, including but not limited to information relating to a party's or its Affiliates' operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities, customers, clients or suppliers, except as permitted by Condition 13.2.

**13.2** Each party may disclose the other party's confidential information:

- (a) to its and its Affiliates' employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its and its Affiliates' employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**13.3** Neither party shall use the other party's or its Affiliates' confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

**13.4** Confidential information shall not include information which:

- (a) is or becomes public other than through breach of this Contract;
- (b) was lawfully known to the receiving party before disclosure;
- (c) is lawfully received from a third party without restriction; or
- (d) is independently developed without reference to the disclosing party's confidential information.

**13.5** Upon termination or expiry of the Contract, each party shall, on request, return or destroy the other party's and its Affiliates' confidential information, except to the extent it is required to be retained by law or for legitimate internal compliance purposes or it is otherwise permitted to use the same under any other contractual arrangement in place between the parties.

**13.6** Each party acknowledges that a breach of this Condition 13 may cause irreparable harm for which damages may be an inadequate remedy, and that the other party shall be entitled to seek injunctive or equitable relief.

## **14. Compliance with Relevant Laws and Policies**

**14.1** The Supplier shall comply and shall ensure that its sub-contractors comply in all respects with all applicable laws, regulations and codes of practice and with the Supplier Code of Conduct. The Supplier shall also comply with any mandatory Client terms that the Customer is required to flow down to its suppliers and/or any information handling

requirements, as notified to the Supplier in writing. The Supplier acknowledges that the Supplier Code of Conduct forms part of the Contract.

- 14.2** The Supplier warrants that it shall not engage in any activity, practice or conduct which would constitute a tax evasion facilitation offence under applicable laws and regulations. The Supplier shall also maintain procedures to prevent the facilitation of tax evasion by another person (including employees) and to ensure compliance with regulatory guidance and this Condition. The Supplier shall promptly report to the Customer any request or demand from a third party to facilitate the evasion of tax in connection with the performance of the Contract.
- 14.3** The Supplier warrants that its directors, employees, agents, representatives, contractors and sub-contractors, and any other person acting on their behalf will not: (i) offer, give or agree to give or receive, request or accept any financial, equivalent thereof or other advantage of any kind as an inducement or reward for doing or not doing any improper act or for the improper performance of any function associated with the Contract or the Goods; nor (ii) act in any way which would constitute an offence by the Supplier or would cause the Customer to commit an offence under any anti-bribery legislation; nor (iii) employ any workers under the age of 15 or, in the countries subject to the developing country exception of the ILO Convention 138, employ any workers under the age of 14; or (iv) breach applicable anti-slavery legislation or any applicable anti-corruption legislation.
- 14.4** The Supplier shall indemnify, defend and hold harmless the Customer on demand against any losses, damages and expenses, including all legal and professional fees, incurred or sustained by the Customer which are caused by or arise in connection with a breach of this Condition 14.
- 14.5** If the Supplier breaches any of Conditions 14.1 to 14.3, the Customer shall be entitled to terminate the Contract by written notice with immediate effect. Any termination under this Condition 14 shall be without prejudice to the Customer's accrued rights.
- 14.6** The Supplier shall, on request, provide reasonable evidence of compliance with this Condition 14, including policies, procedures, training records and certifications, and shall permit the Customer to carry out audits to verify such compliance.
- 14.7** This Condition 14 shall survive termination or expiry of the Contract.

## **15. Export, Import and Regulatory Compliance**

- 15.1** The Supplier shall obtain in good time all export authorisations and/or licences necessary for the delivery of the Goods, Services, Software or information to the Customer at the time specified in the Contract. The Supplier and Customer will support each other fully by providing promptly when requested, any documentation or other written assurances, such as completing End User Undertakings, to allow for the application of necessary import and export authorisations, permits, and licences. The Customer and Supplier will share copies of all licences, permits, or other relevant authorisations when requested by the other party.
- 15.2** In the event that any application for any licence, permit, or other approval from a government or regulatory authority is refused or denied by the relevant authority, and a party is unable to fulfil its obligations under the Contract as a result, such refusal or denial shall be deemed a Force Majeure Event in accordance with Condition 19. Neither party shall be held liable for failure to perform their obligations during the period of such Force Majeure Event, provided that the party whose application has been refused or denied promptly notifies the other party of the refusal or denial and takes all reasonable steps to promptly resolve or mitigate the situation.
- 15.3** The Supplier and Customer each agree to comply with all applicable laws and regulations as they relate to the import, export, transfer and re-export of information, software and/or goods and/or the Customer's or Supplier's property. Without limiting the foregoing, neither the Customer nor the Supplier shall disclose or deliver any information, Software or Goods and/or property provided under the Contract in any manner contrary to any applicable export or import laws and regulations. The Customer and the Supplier acknowledge that these laws and regulations impose restrictions on import, export, transfer and re-export to third countries of certain categories of information, services, software and goods, and that authorisations/licences from the applicable regulatory agency may be required before such information, services, software, goods and/or property can be disclosed or delivered hereunder, and that such authorisations/licences may impose further restrictions on use and further disclosure or delivery of such information, services, software, goods and/or property.
- 15.4** In relation to both domestic and international transactions, the Supplier shall provide the Customer with export classification information for all Goods, Services, Supplier property, Software and information delivered to the Customer. Export classification information includes the applicable export control classification number ("ECCN"), and the Harmonised Tariff Code. The Customer will supply the Supplier with similar export classification information for relevant Customer property and/or information for which the Customer has design authority. The Customer and Supplier will each promptly notify, in writing, the other upon a change in classification information.
- 15.5** The Supplier shall promptly inform the Customer in writing if it becomes aware of any actual or suspected violation of applicable laws or regulations. This notification must include comprehensive details on the nature and extent of the

actual or suspected violation. In the event of an investigation performed by the Customer, a Client or by regulatory authorities concerning export compliance, the Supplier agrees to fully cooperate and support the Customer in all investigative activities, including but not limited to sharing relevant information and documentation as may be required by the Customer. Client or respective regulatory agencies to support in demonstrating compliance. The Supplier shall cooperate fully with implementing any necessary remediation actions required due to any actual or suspected violation. This may include, but is not limited to, quarantining or returning Goods, Software, property or information to the Customer or another third-party, ceasing further shipments, or deleting any associated information or data. If the Supplier is based in the United States and will manufacture or export defence Goods or Services for the Customer, the Supplier will first register pursuant to Section 122.1(a) of the International Traffic in Arms Regulations (ITAR) with the Directorate of Defence Trade Controls at the US Department of State. Proof of this registration must be provided by the Supplier upon request by the Customer. All costs associated with investigation, remediation, delays, rework or corrective actions arising from any breach of this Condition 15 shall be borne by the Supplier.

**15.6** The Supplier acknowledges that the Contract may be subject to the provisions of the US Federal Acquisition Regulation ("FAR", Title 48 CFR) and the Defense Federal Acquisition Regulation Supplement ("DFARS", Title 48 CFR Chapter 2). The Customer reserves the right at any point throughout the duration of the Contract to inform the Supplier in writing of the applicability of any of the FAR or DFARS to the Contract. The Supplier shall comply with all applicable FAR and DFARS clauses, regulations, and requirements when notified of their applicability to the Contract. The Supplier shall, upon request, provide evidence of compliance with any applicable FAR or DFARS provisions, including but not limited to certifications or reports. In the event of any conflict between the Contract and the applicable FAR or DFARS clauses, the FAR or DFARS provisions shall prevail.

**15.7** The Supplier shall indemnify, defend and hold the Customer harmless to the fullest extent permitted by law in respect of any loss, damage or expense, excluding lost profits, for any failure by the Supplier to comply with such laws and regulations and/or the foregoing provisions of this Condition 15.

**15.8** This Condition 15 shall survive termination or expiry of the Contract.

## **16. Data Protection**

**16.1** Unless expressly agreed otherwise in writing between the Supplier and the Customer and subject to Condition 16.2, when either party collects and processes any personal information belonging to the other party under or in connection with the Contract, the party collecting and processing such personal information shall do so as an independent data controller and shall comply with all the requirements of the Data Protection Laws applicable to data controllers (or any equivalent role under the applicable Data Protection Laws). Where a party discloses personal information to the other party under or in connection with the Contract, it warrants that it has a lawful basis for doing so in accordance with Data Protection Laws.

**16.2** Where, in performance of the Contract, the Supplier is required to act as a processor, business associate, service provider or any similar role in respect of personal information belonging to the Customer, the Supplier shall enter into a written data processing agreement with the Customer in a form acceptable to the Customer. Pending execution of a data processing agreement, the Supplier shall, where acting as a processor, business associate, service provider or any similar role for the Customer, process such personal information only on documented instructions from the Customer, ensure appropriate technical and organisational security measures are in place, ensure that persons authorised to process such personal information are subject to confidentiality obligations, not engage sub-contractors in relation to processing such personal information without the Customer's prior written consent, and not transfer such personal information outside of the US without the Customer's prior written consent.

**16.3** The Supplier shall notify the Customer without undue delay, and in any event within **48 hours**, upon becoming aware of any data or security breach affecting personal information processed by it under the Contract (whether as a data controller or as a processor, business associate, service provider or any similar role on behalf of the Customer).

**16.4** In the event of any conflict between the Contract and any data processing agreement entered into pursuant to this Condition 16, the data processing agreement shall prevail.

## **17. Termination**

**17.1** Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) there is a change of Control of the Supplier; or
  - (ii) the Supplier commits a breach of Conditions 14 or 27 or any other material breach of the Contract; or
- (b) for convenience by giving the Supplier 14 days' written notice.

**17.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect

by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party becomes insolvent or takes any step or action in connection with its entering bankruptcy, receivership, reorganisation or any composition or arrangement with or assignment for the benefit of its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a trustee, receiver or custodian appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

## **18. Consequences of Termination**

- 18.1** On termination of the Contract, the Supplier shall immediately deliver to the Customer all Goods and/or Deliverables, whether or not then complete, that have been paid for by the Customer and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 18.2** Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 18.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 18.4** If the Contract is terminated by the Customer in accordance with Conditions 17 or 19 or for any other reason whereby the Supplier can no longer or will no longer continue to supply the Goods and/or Services in accordance with the Contract, the Supplier shall, at no additional cost to the Customer and including during any transition period following notice of termination, deliver to the Customer all information, processes, documentation and methods necessary, inclusive of all Intellectual Property Rights, to enable the Customer to make or, have made by others, the Goods and/or Services furnished under the Contract to the extent necessary so that the Customer can meet its existing Client requirements as at the effective date of termination.

## **19. Force Majeure**

- 19.1** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**), provided that the affected party:
  - (a) promptly notifies the other party in writing of the Force Majeure Event and its expected duration; and
  - (b) uses all reasonable endeavours to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as reasonably practicable.
- 19.2** A Force Majeure Event shall not include:
  - (a) lack of funds or financial distress;
  - (b) failure of suppliers, subcontractors or service providers, except where caused by a Force Majeure Event affecting them; or
  - (c) events which could reasonably have been prevented or mitigated by the affected party.
- 19.3** Where a Force Majeure Event prevents, hinders or delays the Supplier's provision of the Goods and/or Services for a continuous period of thirty (30) days or more, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

**19.4** Nothing in this Condition 19 shall affect the Customer's rights under Conditions 17 or 18, including its rights to terminate the Contract, require transition assistance, or procure alternative goods or services.

## **20. Safety and Environmental Regulation**

**20.1** The Supplier shall comply in all respects with applicable environmental and health and safety laws and regulations in connection with the Contract including but not limited to the Occupational Safety and Health Act of 1970 and any relevant regulations including any enforcement action, investigation or prosecution. The Supplier shall indemnify, defend and hold harmless the Customer on demand against all damages, costs, losses, charges, expenses or liabilities suffered or incurred by the Customer whatsoever caused by or arising out of any breach by the Supplier of such laws and regulations.

**20.2** The Supplier shall maintain a written health and safety policy and provide a copy to the Customer upon request.

**20.3** The Supplier shall ensure that all personnel working on the Customer's premises comply with the Customer's site rules and attend any mandatory induction prior to commencing work.

**20.4** The Supplier shall ensure that all personnel engaged in connection with the Contract are adequately trained, competent, and hold any required certifications for the tasks they perform.

**20.5** The Supplier shall provide and enforce the use of appropriate PPE for all personnel engaged in connection with the Contract and ensure that all equipment used meets legal safety standards and is properly maintained.

**20.6** The Supplier shall prepare and where requested submit to the Customer risk assessments and method statements for approval prior to commencing any work in connection with the Contract involving significant hazards, including but not limited to working at height, hot works, or confined spaces.

**20.7** The Supplier shall immediately report any accidents, near misses, or dangerous occurrences in connection with the Contract to the Customer and cooperate fully in any investigation.

**20.8** The Supplier shall promptly notify the Customer of any health and safety hazards associated with its work or equipment in connection with the Contract.

**20.9** The Supplier shall comply with the Customer's zero-tolerance policy on drugs and alcohol.

**20.10** The Supplier shall ensure that any subcontractors engaged by it in connection with the Contract comply fully with the requirements set out in this Condition 20.

**20.11** The Customer reserves the right to instruct the Supplier to suspend or terminate work in connection with the Contract immediately if health and safety standards are breached, without liability for any resulting delay or cost and without prejudice to any other rights or remedies of the Customer.

**20.12** The Customer shall have the right, on reasonable notice, to audit and inspect the Supplier's health, safety and environmental compliance in connection with the Contract and to request reasonable remedial action to be promptly taken by the Supplier.

## **21. Hazardous Materials**

**21.1** The Supplier must advise the Customer upon receipt of the Order if the Goods to be supplied contain any hazardous or harmful materials requiring special handling or treatment.

**21.2** The Supplier shall comply with all applicable requirements contained in laws, regulations and directives relating to the supply of goods and hazardous materials including national, UK, EU, United States, federal/state/provincial and local environmental and health and safety laws, regulations and directives. In particular:

- (a) all Goods and their component parts, substances and materials shall comply with the requirements set forth in the Montreal Protocol on ozone depleting substances;
- (b) prior to delivery of Goods to the Customer, the Supplier shall notify the Customer in writing of all Substances of Very High Concern detailed within Regulation EC1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);
- (c) unless the Supplier notifies the Customer in writing and obtains the Customer's prior written consent, no Goods shall contain any of the restricted substances referred to in Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment;
- (d) the Supplier shall be responsible for all costs and liabilities relating to the recycling of Goods pursuant to

Directive 2012/19/EU on waste electrical and electronic equipment;

- (e) all Goods and hazardous materials supplied to the Customer shall comply with all applicable requirements under the Toxic Substance Control Act, 15 U.S.C. 2601 et seq; and
- (f) the Supplier shall comply with all local or national legislation or regulations implementing the requirements set out in (a) to (e) above and/or any equivalent legislation or regulations in each country to which the Goods are supplied to the Customer.

**21.3** Any Goods supplied in breach of this Condition 21 may be rejected by the Customer and returned at the Supplier's cost and risk.

**21.4** The Supplier warrants that compliance with this Condition 21 shall be maintained by it throughout the term of the Contract.

## **22. Obsolescence**

**22.1** The Supplier is responsible, at its own cost, for managing obsolescence throughout the Contract to ensure compliance with all Contract requirements.

**22.2** The Supplier warrants that the Goods (and all components, assemblies, or materials used in the Goods) are not obsolete or due to become obsolete within twenty-four (24) months of delivery of each shipment, unless otherwise agreed in writing by the Customer.

**22.3** As soon as reasonably practicable after the Supplier becomes aware of any actual or suspected obsolescence issue with any of the Goods or components, assemblies, or materials used in the Goods and in any event not less than twenty four (24) months before any of the same become obsolete, the Supplier shall provide notification in writing to the Customer (the "**Obsolescence Notification**") and provide an obsolescence management plan (the "**Obsolescence Management Plan**").

**22.4** The Obsolescence Notification must include, as a minimum, the following information:

- (a) the number and description of the obsolete Goods or components, assemblies, or materials used in the Goods and sources involved;
- (b) the anticipated production end date; and
- (c) the last time to buy date.

**22.5** The Obsolescence Management Plan shall include without limitation:

- (a) a plan for managing the loss, or impending loss, of manufacturers or suppliers of Goods, or components, assemblies, or materials used in the Goods; and
- (b) all technical terms, specifications, drawings and any other documents pertaining to the obsolete items, which may be required for the purposes of location and, if necessary, manufacturing of the replacement items.

**22.6** Following submission of an Obsolescence Notification, the Supplier shall use its best endeavours to reach a solution in respect of replacement Goods or components, assemblies, or materials used in the Goods satisfactory to the Customer and the Supplier warrants that it shall not do anything which would prejudice any potential solution.

**22.7** The Supplier shall identify within the Obsolescence Management Plan a solution for the supply of replacement Goods or components, assemblies, or materials used in the Goods which:

- (a) are of the same form, type and function as the obsolete items;
- (b) conform to:
  - (i) the technical terms and specification which the obsolete items conformed to; or
  - (ii) any applicable later version of or replacement for that specification; or
  - (iii) if compliance with Conditions 22.7(b)(i) or 22.7(b) (ii) is impossible, a specification which is no worse than the specification to which the obsolete items conformed; and have no material adverse impact on price and delivery date, or if it is not possible to find replacement items which do not have a material adverse impact on price and/or delivery date, have the minimum adverse impact achievable.

**22.8** Upon receipt of the Obsolescence Notification from the Supplier, the Customer may in its sole discretion submit a single Order (the "**Last Time Buy Order**") for Goods listed in or containing items listed in the Obsolescence Notification,

which Order may be for up to one (1) year worth of stock based on the Customer's purchasing volume of the affected Goods during one (1) year immediately preceding the Last Time Buy Order. The option to submit a Last Time Buy Order constitutes a standing and valid offer on the part of the Supplier, and the Customer's Last Time Buy Order shall constitute a binding acceptance of this offer. The Supplier must prioritise fulfilment of any Last Time Buy Order(s) submitted by the Customer before any order placed by the Supplier's other customer(s). The Supplier shall use its best endeavours to supply the quantities of the Goods specified in the Last Time Buy Order, failing which it shall supply the Goods in quantities as close as possible to the quantities specified in the Last Time Buy Order. Any shortfall in quantities shall be notified to the Customer promptly together with proposed mitigation measures.

- 22.9** The prices for the Last Time Buy Order Goods shall be in accordance with the price specified in the Contract.
- 22.10** Last Time Buy Order(s) submitted by the Customer must be scheduled for delivery within or no earlier than the time period or date specified in the Last Time Buy Order.
- 22.11** Notwithstanding Condition 22.7(b)(iii), the Supplier shall be responsible for all costs associated with locating replacement Goods and associated vendor interface and engineering efforts.
- 22.12** If the Supplier is unable to provide a satisfactory solution to obsolescence in accordance with this Condition 22, the Customer may terminate the Contract in whole or in part without liability. This Condition 22 shall survive termination or expiry of the Contract.

## **23. Conflict Minerals Disclosure**

- 23.1** The Supplier shall support the Customer's compliance with sourcing obligations to certain Clients subject to requirements to report sourcing of tin, tantalum, tungsten and gold ("**Conflict Minerals**") from certain countries in the African subcontinent. The Supplier shall have due diligence processes in place consistent with applicable law and recognised industry standards to make reasonable enquiries, including with the Supplier's supply chain, into the country of origin of Conflict Minerals included in the Goods sold to the Customer.
- 23.2** The Supplier shall disclose to the Customer in writing those Goods containing Conflict Minerals prior to acceptance of the Order. The Supplier shall report such data as may be required by the Customer to fulfil its obligations to its Clients on sourcing of Conflict Minerals.
- 23.3** The Customer shall have the right, on reasonable notice, to audit or verify the Supplier's Conflict Minerals due diligence processes and supporting records.
- 23.4** Any failure to disclose Conflict Minerals in accordance with this Condition 23 shall be deemed a material breach of the Contract.

## **24. Counterfeit Goods**

- 24.1** All Goods provided by the Supplier to the Customer, including any that are provided by the Supplier's sub-contractors, must be original and genuine, and in full compliance with the Contract requirements, specifications, certifications, and any supporting data representing Contract performance. The Supplier warrants that the Supplier has received from all of its sub-contractors and suppliers all data necessary to comply with this obligation and the Supplier has validated all such data. The Supplier will ensure that none of the Goods are counterfeit, inaccurately marked, or in any manner misrepresented.
- 24.2** The Supplier shall operate a counterfeit control process for all Goods regardless of industry sector consistent with this Condition 24 and reasonable commercial terms for applicable industry sectors. The Customer shall have the right to audit, inspect and/or approve the process at any time before or after delivery of the Goods.
- 24.3** If any of the Goods delivered or to be delivered under the Contract are discovered to be a counterfeit item or suspected to be a counterfeit item, then the Customer shall have the right to impound the item for further investigation of its authenticity. The Customer's investigation may include the participation of third parties or regulatory agencies as required by law or regulations or by a Client, or by the Customer, in its sole discretion. The Supplier shall cooperate in good faith with any investigation conducted by the Customer, including, but not limited to, cooperation by the Supplier with respect to the disclosure of all design, development, manufacturing and traceability records in respect of the item. Upon the Customer's request, the Supplier shall provide to the Customer certificates of conformance with respect to the item under investigation. The Customer shall not be required to return the item to the Supplier during the investigation process or thereafter. The Customer shall not be liable for payment to the Supplier of the price of any suspected counterfeit item under investigation. All costs associated with investigation, testing, impoundment, storage, replacement and any related delays shall be borne by the Supplier.
- 24.4** The Supplier shall, at its own cost and without delay, replace any counterfeit or suspected counterfeit Goods with conforming Goods acceptable to the Customer.

**24.5** The Supplier shall, in connection with any counterfeit Goods, notify all relevant regulatory authorities and affected parties where required by law and shall provide the Customer with copies of any such notifications.

## **25. Quality and Conformance**

**25.1** Without prejudice to Conditions 3.1 and 5.3, the Goods, and any materials used in the supply of the Services, shall be manufactured, assembled, quality checked and supplied in accordance with the Contract and/or any defined specification, Customer requirement, drawing, process instruction or procedure.

**25.2** This Condition 25 shall survive termination or expiry of the Contract.

### **Quality & right to inspect and audit**

**25.3** The Supplier shall operate an effective quality management system that provides a means of ensuring that the Goods and any products, materials, designs and/or processes used in the supply of the Goods or Services conform to the Customer's requirements, and that meets the requirements of ISO 9001 and any other future mandatory quality management standards and shall maintain such certifications for the duration of the Contract. If the Supplier is a test and/or calibration laboratory, the Supplier must be ISO 17025 accredited by UKAS or a similar notified body under the mutual recognition agreement (MRA) for EA – European Accreditation / Global ACI. Special process suppliers must as a minimum be ISO9001 approved. The Customer considers the following to be Special Processes:

- (a) Anodizing / Other / Plating
- (b) Welding / Soldering / Brazing
- (c) Conformal Coating
- (d) Painting / Power-coating
- (e) Non-destructive testing (NDT)

**25.4** The Supplier shall promptly inform the Customer of changes to its certification, registration and accreditation status and any other changes that may affect quality such as manufacturing location.

**25.5** The Customer or any person authorised by it, including a Client or any regulatory authority, shall have the right to audit the quality management systems of the Supplier and to conduct audits and/or inspections (including source inspections and testing) of the Supplier to enable the Customer to verify that the Supplier is in full compliance with its obligations under the Contract and the Customer's requirements, including but not limited to inspection of any tools or materials procured for or used in the manufacture of the Goods or in the provision of the Services, or any manufacturing processes carried out on completed Goods before dispatch. The Supplier shall comply with all reasonable requests of the Customer (and/or its authorised representatives) during any such audit or inspection. The Customer shall be entitled, on giving forty-eight (48) hours' written notice, to have access to any premises under the Supplier's control in order to carry out any such audit or inspection and may use the Supplier's testing and measuring equipment, free of charge, for audit or inspection purposes.

**25.6** The Supplier shall, within the period reasonably set out by the Customer, comply with any reasonable audit or inspection recommendations issued by the Customer.

**25.7** Records related to the manufacture and/or process operations for the Goods, including inspection, test and traceability, are to be retained by the Supplier and made available on request for verification by the Customer or a Client for a minimum of seven (7) years unless otherwise agreed in writing by the Customer.

### **Non-conformance**

**25.8** The Customer may inspect and test the Goods at any time prior to delivery. The Supplier shall remain fully responsible for the Goods or materials for use in the supply of Services (as the case may be) despite any inspection or testing by the Customer, and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

**25.9** If following such inspection and/or testing the Customer considers that the Goods or materials for use in the supply of Services do not comply or are unlikely to comply with the Contract or any defined specification, Customer requirement, drawing, process instruction or procedure, the Customer shall inform the Supplier and the Supplier will follow the procedure set out at Condition 25.10.

**25.10** Goods or materials for use in the supply of Services identified as being non-conforming prior to delivery – either under Condition 25.9 or by the Supplier's own quality department – shall not be delivered to the Customer unless the Supplier complies with the procedure set out at Condition 25.10.

- 25.11** Where the Supplier opts either to scrap and replace non-conforming Goods or materials for use in the supply of Services or re-work them to full conformance prior to dispatch, no concession/approval is required from the Customer. In order to dispatch the Goods or materials in their non-conforming state or repair the non-conforming Goods or materials prior to dispatch, the Supplier must request prior written approval from the Customer, by submitting a concession request form to the Customer. In these circumstances, the Supplier is not authorised to dispatch the non-conforming Goods or materials until it has received a copy of the applicable concession request form approved and signed by the Customer and been informed of the applicable concession number. This concession number must appear on the Supplier's Certificate of Conformity each time a delivery is made from the batch that has been approved under concession.
- 25.12** The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions and prior to dispatch. Any non-conformance identified on further inspection and testing may require, at the Customer's absolute discretion, some or all of the procedure at Condition 25.10 to be repeated.
- 25.13** The Supplier shall notify the Customer of any non-conforming Goods or materials for use in the supply of Services discovered after delivery so that appropriate corrective action can be taken. Copies of all records relating to the non-conformance shall be sent to the Customer. The Customer shall notify the Supplier of any non-conforming Goods or materials and/or poor workmanship discovered after delivery. The Customer will contact the Supplier and issue a Supplier Corrective Action Report (SCAR) against the Goods or materials noted for corrective action by the Supplier, where appropriate. This Condition 25.13 is without prejudice to any other rights and remedies the Customer may have arising out of non-conforming Goods or materials.
- 25.14** Without prejudice to any other rights and remedies the Customer may have, if any Goods and/or Services supplied or to be supplied under the Contract are not in full compliance with the Contract or any defined specification, requirement, drawing, process instruction or procedure, the Customer shall be entitled to recover from the Supplier, as liquidated damages for the Customer's assessment, inspection and internal administrative costs, a total of 3% of the price of the Goods and/or Services for non-compliances identified by the Supplier or the Customer before shipment; and a total of 5% of the price of the Goods and/or Services delivered for non-compliances first identified by the Supplier or the Customer on or after delivery to the Customer. The Customer shall be entitled to deduct such damages from any monies payable by the Customer under the terms of the Contract or otherwise.
- 25.15** In addition, the Customer reserves the right to charge (i) any other costs, expenses and damages related to the Supplier's non-compliances, including but not limited to the Customer's or a Client's costs of removal, disassembly, failure analysis, fault isolation, reinstallation, reinspection and retrofit; and (ii) liquidated damages, penalties and claims payable by the Customer to the Client(s) as a result of the non-compliances. These remedies do not affect any other legal rights which the Customer may have in respect of such defective Goods and/or Services.

#### **Life Limited Items**

- 25.16** Where the Goods include any components subject to a defined service life, usage limit or expiry ("**Life Limited Items**"), the Supplier shall identify such items in writing prior to delivery, including applicable life limits and handling requirements.
- 25.17** The Supplier warrants that all Life Limited Items:
- (a) are new (unless otherwise agreed in writing by the Customer);
  - (b) have not exceeded their specified life limits at delivery; and
  - (c) have a minimum remaining life of not less than 80% (as applicable), unless otherwise agreed in writing.
- 25.18** The Supplier shall provide, on delivery to the Customer, documentation evidencing life status and traceability, including manufacturing or batch details and life consumed and remaining.
- 25.19** The Supplier shall ensure full traceability of all Life Limited Items and retain related records for a minimum of ten (10) years (or as otherwise required under the Contract).
- 25.20** Any non-compliant Life Limited Item shall be deemed non-conforming, and the Customer may reject the item, require replacement at the Supplier's cost and recover any resulting losses.
- 25.21** The Supplier shall promptly notify the Customer of any defects or changes affecting the life, performance or safety of any Life Limited Items.
- 25.22** The Supplier shall not substitute or modify any Life Limited Items without the Customer's prior written approval.
- 25.23** These obligations in respect of Life Limited Items shall survive delivery, acceptance of Goods and termination or expiry of the Contract.
- 26. Client Flow-Down Requirements, Industrial Benefits and Offset**
- 26.1** In order to meet the requirements of a Client, the Customer may have to accept terms which are to be flowed down to

the Customer's supply chain, and the Supplier shall accept the application of corresponding terms to the Contract. The Supplier shall promptly cooperate with the Customer and implement and carry out the procedures and requirements which the Customer adopts and disseminates to meet any Client's requirements.

**26.2** The Customer may use all or any part of the value of the Contract, including the value of any sub-contracts placed by the Supplier for the Contract, for satisfying the Customer's international offset obligations, and/or the offset obligations of the Customer's Affiliates and/or any entity to which the Customer transfers such value. The Supplier may use the offset credit generated by the Contract or the sub-contracting of the Contract only with the Customer's prior written approval.

**26.3** The Customer and the Customer's assignees shall be entitled to all industrial benefits and/or offset credits that might result from the Contract. The Supplier shall provide all information and assistance to the Customer that it or the Customer's assignees may reasonably request in support of the Customer's the Customer's assignees efforts to secure industrial benefits and offset credits related to the Goods.

## **27. Cybersecurity**

**27.1** The Supplier shall hold and maintain, throughout the term of the Contract, cybersecurity accreditation at a level satisfactory to the Customer and each applicable Client, and shall, on request by the Customer, provide evidence of such accreditation.

**27.2** The Supplier shall notify the Customer without undue delay, and in any event within 48 hours, of any actual or suspected cybersecurity incident affecting the Goods, Services or Customer data (including Personal Data).

**27.3** Breach of this Condition 27 shall give the Customer the right to terminate the Contract with immediate effect.

## **28. Use of AI Systems**

**28.1** The Supplier shall not use any AI System in connection with the Contract without the Customer's prior written approval.

**28.2** The Supplier shall ensure that Customer data (including Personal Data) is not entered into any AI System that aggregates data with other customer information, discloses Customer data to any third party or uses such data to train, fine-tune or improve any AI System.

**28.3** AI Systems may only be used by the Supplier where appropriate technical and organisational measures are in place to safeguard the confidentiality, integrity, and availability of Customer data, and any use shall cease upon termination or expiry of the Contract.

## **29. General**

### **29.1 Assignment and other dealings**

- (a) The Customer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) Save as permitted under applicable law in relation to the assignment of receivables, the Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

**29.2 Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

### **29.3 Notices**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or nationally recognised courier (with all fees prepaid) or certified or registered mail (in each case, return receipt and postage prepaid) at its principal place of business.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand or courier, at the time the notice is left at the proper address; or
  - (ii) if sent by certified or registered mail, at 9.00 am on the second Business Day after posting.
- (c) Day to day communications which do not constitute formal notice under the Contract may be also made by email.
- (d) This Condition 29.3 does not apply to the service of any proceedings or other documents in any legal action, arbitration or other method of dispute resolution.

- (e) Notices may also be given by email where the recipient has notified an email address for service of notices, and such notice shall be deemed received at 9am on the next Business Day.

- 29.4 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this Condition 29.4, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 29.5 Waiver.** Except as set out in Condition 2.6, no failure or delay by a party to exercise any right, remedy, power or privilege provided under the Contract or by law shall constitute a waiver of that or any other right, remedy, power or privilege, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 29.6 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership, joint enterprise or joint venture between the parties, constitute either party the agent of the other, create any employment or fiduciary relationship between the parties or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 29.7 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 29.8 Third party rights.** The Contract is for the sole benefit of the parties to it and their respective successors and permitted assigns and nothing in these Conditions, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Contract.
- 29.9 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by an authorised representative of each of the Customer and the Supplier.
- 29.10 Governing law.** All matters arising out of or relating to the Contract are governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of any of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or relating to the Contract shall be referred to and resolved by binding arbitration under the Rules of the American Arbitration Association. The place of arbitration shall be in Virginia and the language of the arbitration shall be English. Nothing in this Condition shall prevent either party from seeking urgent injunctive or equitable relief from any US court of competent jurisdiction.
- 29.11** The United Nations Conventions on Contracts for the International Sale of Goods 1980 shall not apply to any aspect of this Contract.