

**Terms and Conditions for the Purchase of Goods or Services****1 INTERPRETATION****1.1 Definitions**

In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**Buyer:** Stirling Dynamics Limited, 230, Bristol Business Park, Stoke Gifford, Bristol, BS16 1FJ.

**Charges:** the charges payable by Stirling for the supply of Goods or Services in accordance with Condition 9.

**Commencement Date:** has the meaning set out in Condition 2.1.

**Conditions:** these terms and conditions as amended from time to time in accordance with Condition 20.8.

**Conflict Minerals:** means Tin, Tantalum, Tungsten or Gold ("3TG") or any other minerals originating from conflict-affected or high-risk areas including without limitation those minerals and areas defined in the EU 'Conflict Minerals' Regulation (2017/821) and associated guidance.

**Contract:** the contract between Stirling and the Supplier for the supply of Goods or Services in accordance with these Conditions.

**Counterfeit Parts:** A fraudulent part that has been confirmed to be a copy, imitation, or substitute that has been represented, identified, or marked as genuine, and/or altered by a source without legal right with intent to mislead, deceive or defraud.

**Customer:** Stirling's customer (end customer) which intends to purchase Goods and Services from Stirling.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Location:** has the meaning set out in Condition 5.2.

**Disclosing Party:** has the meaning set out in Condition 15.1.

**Due Date:** is the contractual date for payment set out in the Order.

**Fraudulent Part:** Any suspect part misrepresented to Stirling as meeting Stirling's requirements.

**Goods:** the goods, materials or artefacts (or any part of them) set out in the Order.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in

goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** Stirling's order for the supply of Goods or Services, as set out in Stirling's purchase order form, or in Stirling's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Receiving Party:** has the meaning set out in Condition 15.1.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Statement of Work, Specification or other applicable documents.

**Specification:** the description or specification for the Goods or Services, including any related plans and drawings, that is agreed in writing by Stirling and the Supplier, or as set out in the Order.

**Statement of Work:** Specifies the scope of supply of goods and services, work to be done in developing, producing and supporting the items to be delivered or services to be performed.

**Stirling:** Stirling Dynamics Limited registered in England and Wales with company number 02092114.

**Stirling Materials:** has the meaning set out in Condition 4.4.5.

**Suspect Part:** A part in which there is an indication that it may have been misrepresented by the Supplier or manufacturer and may meet the definition of fraudulent part or counterfeit parts.

**Supplier:** the person or firm from whom Stirling purchases the Goods or Services.

**Work:** Performing and furnishing all required design, development or modification, testing, articles, materials, supplies, software, data, task, services or other work as provided in the applicable Statement of Work.

## 1.2 Construction

In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2 BASIS OF CONTRACT

**2.1** The Order constitutes an offer by Stirling to purchase Goods or Services in accordance with these Conditions.

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

**2.1.1** the Supplier issuing written acceptance of the Order; or

**2.1.2** 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**).

**2.2** 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 trade, custom, practice or course of dealing.

## 3 PRECEDENCE

**3.1** In the event of conflict between the following documents, the order of precedence between them shall be as follows:

**3.1.1** The Order;

**3.1.2** Any flow down of Customer specific terms and conditions;

**3.1.3** These Conditions (which are incorporated by reference in any Order issued hereunder);

**3.1.4** The Specification;

**3.1.5** The Statement of Work; and

**3.1.6** Any other documents included or referenced in the Order.

## 4 SUPPLY OF GOODS OR SERVICES

- 4.1** The Supplier shall from the Commencement Date or, if later, the date set in the Order and for the duration of this Contract provide the Goods or Services to Stirling in accordance with the terms of the Contract.
- 4.2** The Supplier shall meet any performance dates for the Good or Services specified in the Order or notified to the Supplier by Stirling.
- 4.3** The Supplier shall co-operate with Stirling in all matters relating to the Goods or Services, and comply with all instructions of Stirling;
- 4.4** The Supplier shall:
- 4.4.1** provide all equipment, tools and vehicles and such other items as are required to provide the Services or Goods;
  - 4.4.2** obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - 4.4.3** observe all health and safety rules and regulations and any other security requirements that apply at any of Stirling's premises;
  - 4.4.4** hold all materials, equipment and tools, drawings, specifications and data supplied by Stirling to the Supplier (**Stirling Materials**) in safe custody at its own risk, maintain Stirling Materials in good condition until returned to Stirling, and not dispose or use Stirling Materials other than in accordance with Stirling's written instructions or authorisation;
  - 4.4.5** not do or omit to do anything which may cause Stirling to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Stirling may rely or act on the Services;
  - 4.4.6** notify Stirling in order to obtain disposition approval prior to delivery of any nonconforming product or service; and
  - 4.4.7** retain all records pertinent to the Quality of the Services (Quality Records) for a period of seven [7] years.
- 4.5** The Supplier shall ensure that the Goods or Services shall:
- 4.5.1** be supplied with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 4.5.2** 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 Stirling, will be free from defects in workmanship, installation and design;
  - 4.5.3** unless otherwise agreed by Stirling through concession, be supplied in accordance with their description, any applicable Specification and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to

the Supplier by Stirling expressly or by implication, and in this respect, Stirling relies on the Supplier's skill and judgement;

- 4.5.4 where applicable and unless otherwise stated in the Order, be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and
- 4.5.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.5.6 The Supplier's performance shall be monitored by Stirling in terms of Supplier's scheduled delivery and quality. The Supplier shall, upon request, provide Stirling with performance progress reports. The Supplier shall attend design / technical reviews as agreed with Stirling.

## 5 DELIVERY

5.1 The Supplier shall ensure that:

- 5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), 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; and
- 5.1.3 if the Supplier requires Stirling to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods:

- 5.2.1 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;
- 5.2.2 to Stirling's premises at 230, Bristol Business Park, Stoke Gifford, Bristol, BS16 1FJ or such other location as is set out in the Order, or as instructed by Stirling prior to delivery (**Delivery Location**); and
- 5.2.3 during Stirling's normal business hours, or as instructed by Stirling.

5.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

## **6 TITLE AND RISK**

- 6.1** Title to the Goods shall be vested in the Buyer upon payment to the Supplier and this shall remain in force in the case of remedies detailed in clause 10 until such remedies are fulfilled in accordance with these Conditions; the Buyer shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods at any time before delivery.
- 6.2** Stirling and its agents and employees shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods or any part are stored, or upon which the Stirling reasonably believes them to be kept.
- 6.3** The Supplier shall store and mark the Goods in a manner reasonably satisfactory to the Buyer indicating that title to the Goods remains vested in the Buyer.
- 6.4** Goods are defined as finished components, work in progress, materials used in the production of the end article and raw materials.

## **7 COMPLIANCE WITH FOREIGN REGULATORY REGIMES**

- 7.1** The Supplier shall ensure that all items of work or information to be delivered to Stirling that are of US-origin and ITAR-controlled, or incorporate US-origin ITAR-controlled technology, are accompanied by a 'United States Export Authorisation', issued by the U.S. Department of State, Office of Defense Trade Controls. This 'Export Authorisation' shall include written authority to have the items of work or information re-exported to the Customer, through Stirling Dynamics in the United Kingdom or through another country as directed by Stirling.

## **8 SUSPECT, FRAUDULENT AND COUNTERFEIT GOODS**

- 8.1** The Supplier shall ensure that only new and authentic parts are delivered to Stirling. Unless otherwise specified on the purchase order or approved in writing by Stirling, Stirling will not accept refurbished parts, reprogrammed parts or parts with bent, formed or oxidized leads, test dots or test markings.
- 8.2** The Supplier shall notify Stirling if the parts quoted or delivered to Stirling are from an independent distributor located in Asia, India or Africa
- 8.3** The Supplier shall ensure that suspect, fraudulent or counterfeit parts are not delivered to Stirling using their own counterfeit parts quality procedure.
- 8.4** Stirling may use the following results, services or documents to determine suspect, fraudulent or counterfeit products:
- (a) Stirling's test and inspection;
  - (b) Independent facility for test and inspection;

- (c) Stirling's Customer's test and inspection;
- (d) Government letters.

- 8.5** Suspect, fraudulent and counterfeit parts have no value and if it is later determined that suspect, fraudulent or counterfeit parts were received by Stirling from the Supplier, then any contract terms limiting the Supplier's liabilities and/or warranties shall be deemed unenforceable. Furthermore, any contract documents establishing a transaction involving suspect, fraudulent or counterfeit parts shall be declared null and void. In this case, Stirling will not disburse or release monies; Stirling is entitled to an immediate refund of all monies paid by Stirling in relation to the contact; and Stirling is entitled to an immediate refund of all monies paid by Stirling in escrow.
- 8.6** The Supplier has the right to agree with or dispute Stirling's findings. If the original component manufacturer determines the suspect parts are authentic, then the decision is "final". The Supplier and Stirling hereby agree that if Stirling or a testing laboratory chosen by Stirling determines that the parts supplied are suspect, fraudulent or counterfeit, then the Supplier has the right to:
- (a) Agree with Stirling's findings and the transaction will be voided; or
  - (b) Dispute Stirling's findings by contracting an independent test laboratory for further test and verification. The choice of laboratory shall be agreed by Stirling and the Supplier.
- 8.7** If the Supplier accepts Stirling's findings and chooses to immediately void the transaction, the suspect parts will not be returned to the Supplier unless and/or until an independent test laboratory agreed by both the Supplier and Stirling determines that the parts are not suspect counterfeit or counterfeit. Stirling shall retain possession of the suspect parts for a period at least as long as the applicable statute of limitations under UK law following the date upon which the Supplier received notification from Stirling that it was choosing to immediately void the transaction between them.
- 8.8** If the Supplier exercises its right to have an independent test laboratory determine whether the suspect parts are counterfeit and the test laboratory verifies the findings that the subject parts are either suspect counterfeit or counterfeit, then the Supplier must issue an immediate refund of all monies paid by Stirling. If the suspect parts are determined to be suspect counterfeit or counterfeit by the independent test laboratory, then the Supplier of those parts shall be required to pay for all charges issued by the testing laboratory. If, however, the suspect parts are determined not to be suspect counterfeit or counterfeit, then Stirling shall be required to pay all of the charges issued by the testing laboratory.
- 8.9** Stirling shall have the absolute right to reacquire possession of the subject parts from the test laboratory in order to prevent the subject parts from being offered for sale through any channel of distribution. In the event that the Supplier pursues its Supplier, either in civil or criminal proceedings. The Supplier shall have the right upon request to receive and use a mutually agreeable sample quantity of the parts sold for the purpose of pursuing its remedies. Upon completion of testing, samples will be returned to the Supplier who will then return them to Stirling.
- 8.10** If suspect counterfeit parts are accepted by the UK courts, then destruction of evidence is only allowed once approval from those bodies has been granted. After destruction approval has been granted, then Stirling shall have the absolute right to destroy the suspect parts. If declined, or if there

is no response received within 90 days, then the Supplier and Stirling agree that Stirling shall have the absolute right to destroy the suspect parts after expiration of the applicable statute of limitations under the appropriate UK law.

- 8.11** Notwithstanding the above, if the Supplier and Stirling agree in writing that the parts can be immediately destroyed, the parts will be destroyed per their agreement so long as all civil or criminal actions, in which the suspect parts are the subject of the action, have been completed.
- 8.12** Product seized by U.S. Customs and Border Protection will not be returned to the Supplier. The Supplier can attempt to dispute these findings by providing Stirling with supply chain traceability and/or test and inspection report on the seized product.
- 8.13** Stirling has the right to report suspect, fraudulent or counterfeit parts to Data Reporting Centres (e.g. ERAI, GIDEP, ESCO, etc.). Stirling will generate the report utilizing the form and format provided by the Data Reporting Centre.

## **9 CHARGES AND PAYMENT**

- 9.1** The Charges for the Goods or 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 Stirling, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and/or delivery of the Goods. If no price is quoted, the price set out in the Supplier's published price list in force at the date the Contract came into existence.
- 9.2** The Supplier shall invoice Stirling on completion of the Services and/or delivery of the Goods. Each invoice shall include such supporting information required by Stirling to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 9.3** The Supplier may invoice Stirling for the Goods on or at any time after the completion of delivery.
- 9.4** All amounts payable by Stirling under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT).
- 9.5** Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Stirling, Stirling shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional

amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due.

- 9.6** The price of the Goods shall include the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Stirling.
- 9.7** Stirling shall pay the invoiced amounts within [30] days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.8** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and shall allow Stirling to inspect such records at all reasonable times on request.
- 9.9** Stirling may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier against any amount payable by Stirling to the Supplier under the Contract.

## **10 REMEDIES**

- 10.1** If the Supplier fails to perform the Services by the Due Dates, Stirling shall, without limiting its other rights or remedies, have one or more of the following rights:
- 10.1.1** to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 10.1.2** to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 10.1.3** to recover from the Supplier any costs incurred by Stirling in obtaining substitute Services from a third party;
- 10.1.4** where Stirling has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
- 10.1.5** to claim damages for any additional costs, loss or expenses incurred by Stirling which are in any way attributable to the Supplier's failure to meet such dates.
- 10.2** If the Goods are not delivered on the Due Dates, or do not comply with the undertakings set out in Condition 4.5 then, without limiting any of its other rights or remedies, Stirling shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
- 10.2.1** to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 10.2.2** to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 10.2.3** 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);

- 10.2.4** to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 10.2.5** to recover from the Supplier any costs incurred by Stirling in obtaining substitute Goods from a third party; and
- 10.2.6** to claim damages for any other costs, loss or expenses incurred by Stirling which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 10.3** If the Goods or Services are not delivered on the Due Date Stirling may at its option claim or deduct 2% per cent of the price of the Goods or Services for each week's delay in delivery by way of liquidated damages, up to a maximum of 20% per cent of the total price of the Goods or Services. If Stirling exercises its rights under this Condition 10.3, it shall not be entitled to any of the remedies set out in Condition 10.1 or 10.2 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 10.4** These Conditions shall extend to any substituted, remedial, repaired or replacements Goods or Services provided by the Supplier.
- 10.5** Stirling's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 10.6** The Supplier shall keep Stirling indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by Stirling as a result of or in connection with:
- 10.6.1** any claim made against Stirling for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 10.6.2** any claim made against Stirling by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- 10.6.3** any claim made against Stirling by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 10.7** Clause 10.4 shall survive termination of the Contract.
- 10.8** Stirling's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## 11 STIRLING'S OBLIGATIONS

### 11.1 Stirling shall:

- 11.1.1 provide the Supplier with reasonable access at reasonable times to Stirling's premises for the purpose of providing the Services;
- 11.1.2 provide such information and assistance to the Supplier as the Supplier may reasonably request in writing and Stirling considers reasonably necessary for the purpose of providing the Services.
- 11.1.3 Stirling will flow down in writing any relevant customer specific terms that additionally apply to the purchase order.

## 12 STIRLING PROPERTY

- 12.1 The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by Stirling to the Supplier (**Stirling Materials**) and all rights in Stirling Materials are and shall remain the exclusive property of Stirling. The Supplier shall keep Stirling Materials in safe custody at its own risk, maintain them in good condition until returned to Stirling, and not dispose or use the same other than in accordance with Stirling's written instructions or authorisation.

## 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 In respect of any Goods or Services that are transferred to Stirling under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Stirling, it will have full and unrestricted rights to transfer all such items to Stirling.
- 13.2 The Supplier assigns to Stirling, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the production of the Goods or Services, including for the avoidance of doubt the Deliverables.
- 13.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 13.4 The Supplier shall, promptly at Stirling's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Stirling may from time to time require for the

purpose of securing for Stirling the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Stirling in accordance with Condition 13.2.

**13.5** All Stirling Materials are the exclusive property of Stirling.

## **14 INDEMNITY**

**14.1** The Supplier shall keep Stirling indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Stirling as a result of or in connection with:

**14.1.1** any claim made against Stirling by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

**14.1.2** any claim brought against Stirling for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services.

**14.2** For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on Stirling's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. Indemnity levels shall be a minimum of two times contract value or £1M, whichever is greater.

**14.3** This Condition 14 shall survive termination of the Contract.

## **15 CONFIDENTIALITY**

**15.1** A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Condition 10 shall survive termination of the Contract.

## 16 TERMINATION

- 16.1** Without limiting its other rights or remedies, Stirling may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 16.1.1** the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
  - 16.1.2** the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 16.1.3** the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 16.1.4** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 16.1.5** a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 16.1.6** an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
  - 16.1.7** a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
  - 16.1.8** a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
  - 16.1.9** any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 16.1.2 to Condition 16.1.8 (inclusive); or
  - 16.1.10** the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.
- 16.2** Without limiting its other rights or remedies, Stirling may terminate the Contract by giving the Supplier 1 months' written notice.

## **17 CONSEQUENCES OF TERMINATION**

**17.1** On termination of the Contract for any reason:

- 17.1.1** the Supplier shall immediately deliver to Stirling all Deliverables whether or not then complete and return all Stirling Materials. If the Supplier fails to do so, then Stirling 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 this Contract;
- 17.1.2** the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 17.1.3** clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **18 ETHICAL BEHAVIOUR**

- 18.1** The Supplier shall comply with applicable laws and regulations relating to anti-corruption, including, without limitation: (i) the UK Bribery Act 2010 irrespective of the place of performance, and (ii) laws and regulations implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.N. Convention Against Corruption, in Supplier's country or any country where performance of this Contract will occur. Compliance with the requirements of this clause is a material requirement of this Contract.
- 18.2** In carrying out its responsibilities under this Contract, the Supplier represents that:
  - 18.2.1** they have not paid, offered, promised to pay or authorized and will not pay, offer, promise to pay, or authorize the payment directly or indirectly of any monies or anything of value (in the form of entertainment, gifts, gratuities, kickbacks or otherwise) with the intent of obtaining or rewarding favourable treatment as a Stirling Supplier;
  - 18.2.2** they have not paid, offered, promised to pay or authorized and will not pay, offer, promise to pay, or authorize the payment directly or indirectly of any monies or anything of value to (i) any person or firm employed by or acting for or on behalf of any customer, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision or inducing or rewarding any action by the customer in any commercial transaction or in any governmental matter or securing any improper advantage to assist Stirling or the Supplier in obtaining or retaining business or directing business to any person.
  - 18.2.3** they have an effective policy for detecting and preventing conflicts of interest and requires any owner, partner, officer, director or employee currently or previously holding political office or a role in government or with any supplier/customer to avoid any actual or perceived conflict and to recuse themselves from participation where such a conflict may arise.

- 18.2.4** to their knowledge, no owner, partner, officer, director or employee of the Supplier or of any Affiliate of the Supplier who will be involved in or benefit from the performance of this Contract or the Stirling Prime Contract to which this Contract relates is or will become an official or employee of Stirling's Customer under the Prime Contract or of any agency or instrumentality of government that may have an influence with respect to the Prime Contract. Nothing in the foregoing is intended to prevent the Supplier's employees being members of one of the Reserve Forces provided the Supplier complies with clause 18.2.3.
- 18.2.5** they have not made and will not make, either directly or indirectly, any improper payments, including but not limited to facilitation payments, gratuities or kickbacks.
- 18.2.6** they have established and will maintain an effective business ethics and compliance program and procedures to prevent corruption, ensure compliance with the Bribery Act. and implement the guidance published by the United Kingdom Ministry of Justice relative to compliance with the Bribery Act.
- 18.2.7** they will promptly disclose to Stirling together with all pertinent facts any violation, or alleged violation, of the Bribery Act in connection with the performance of this Contract.
- 18.2.8** they shall include this clause or equivalent provisions in lower tier subcontracts under this Contract.
- 18.3** The Supplier shall comply with all requirements of the Modern Slavery Act 2015 and take all steps to ensure that slavery and human trafficking is not taking place in any part of its supply chain.

## **19 ENVIRONMENTAL, HEALTH & SAFETY LAW**

- 19.1** "Environmental and Health and Safety Law" means any and all laws, by-laws, common laws or other laws or legislation made by a competent authority and rules, regulations, ordinances, orders, notices, directives, practices, guidance notes, circulars, and codes issued pursuant to the same and any authoritative judicial or administrative interpretation of each of the foregoing which have as a purpose or effect or which relate to the protection of employees, the public and the environment or responsibility for health and safety including without limitation:
- 19.1.1** The Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive 2011/65/EU (RoHS 2);
- 19.1.2** The Directive on Waste Electrical and Electronic Equipment (WEEE) 2012/19/EU;
- 19.1.3** Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH);
- 19.1.4** Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures;
- 19.1.5** Any National legislation implementing RoHS, WEEE or REACH;
- 19.1.6** CE Marking and any related product safety requirements pursuant to any applicable New Approach and Global Approach Directives; and

- 19.1.7** Section 6 of the Health and Safety at Work etc. Act 1974.
- 19.2** Notwithstanding any other provision of this Contract, the Supplier warrants and undertakes to Stirling that:
- 19.2.1** All Work furnished under this Contract shall at all times comply with Environmental and Health and Safety Law;
- 19.2.2** All Work furnished under this shall be marked with a CE Marking where applicable;
- 19.2.3** It shall not supply or use any asbestos or materials or equipment containing asbestos in the provision of Work;
- 19.2.4** It shall not supply or use any products or materials containing Chlorofluorocarbons (CFCs) in the provision of Work without the prior written approval (entirely at its discretion) of Stirling;
- 19.2.5** It shall not specify, or permit use of, in Work, any materials or components containing such retardants, including but not limited to Polybrominated Biphenyls (PBBs) and Polybrominated Biphenyl Ethers (PBBEs), also known as Polybrominated Biphenyl Oxides (PBBOs) and shall provide Stirling with certification of compliance as required or for the avoidance of doubt containing any other substance to the extent that it is or would reasonably be expected to be subject to any restriction or other limitation on its use under Environmental and Health and Safety Laws; and
- 19.2.6** It shall not seek to or have any right to rely upon any derogation or exception that may apply to Stirling or its Customer by virtue of the identity of its ultimate Customer in complying with Environmental and Health and Safety Law or any other law applicable to the Work.
- 19.3** If the Work or any portion thereof is to be shipped to or performed in the United States:
- 19.3.1** the Supplier represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Stirling hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the US Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- 19.3.2** the Supplier shall provide to Stirling with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the US Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.
- 19.4** In addition to its obligations to provide a Safety Date Sheet (SDS) in accordance with Environmental and Health and Safety Law, for all Work to be supplied under the Contract, (including for finished or semi-finished articles, any replaceable part of such articles), the Supplier shall provide a declaration in relation to:
- 19.4.1** Any substance in an individual concentration in the Work (or replaceable part) of at least 0.1% weight by weight (w/w) that is persistent, bio accumulative and toxic (PBT) or very persistent and very bio accumulative (vPvB) as defined in Annex XIII of REACH or that is on the REACH 'Candidate List' of substances of very high concern;

- 19.4.2** Any other substance posing human health or environmental hazards in an individual concentration in the Work (or replaceable part) of at least 0.2% weight by weight (w/w); and
- 19.4.3** Any other substance for which there are Europe-wide or UK specific workplace exposure limits.
- 19.5** Any declaration made in accordance with paragraph 19.4 of this clause shall state each substance by name and Chemical Abstracts Service No (or CASN) and the w/w content within the Work (or replacement part) and shall provide safe usage information. The SDS shall be provided in accordance with the requirements for the compilation of SDSs set out in Annex II to REACH.
- 19.6** The Supplier shall inform Stirling if at any time the Work's chemical composition or the status of the chemicals it contains changes such that an initial or modified declaration is required under paragraph 19.4 of this clause providing such information update to Stirling within 45 calendar days of any such changes. Stirling reserves the right to refuse/reject Work that requires a declaration pursuant to paragraph 19.4 of this Clause unless this has been agreed before contract award. Stirling shall have no liability to the Supplier where Work is refused/rejected in accordance with this paragraph.

## **20 GENERAL**

- 20.1** Force majeure: Neither Stirling nor the Supplier shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Services for more than 20 Business Days, Stirling shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.
- 20.2** Assignment and subcontracting:
- 20.2.1** The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Stirling.
- 20.2.2** Stirling may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 20.3** Notices:
- 20.3.1** Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 20.3.2** Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting, or if delivered by commercial courier, on the

date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

- 20.3.3** This Condition 20.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 20.4** Waiver and cumulative remedies:
- 20.4.1** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 20.4.2** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 20.5** Severance:
- 20.5.1** If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 20.5.2** If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 20.6** No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 20.7** Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 20.8** Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Customer.
- 20.9** Entire agreement: The Order and these Conditions shall together represent the entire understanding and constitute the whole agreement between the parties and supersede any previous discussions, correspondence, representations or agreement between the parties with respect thereto. The Supplier shall not rely upon any statement or representation made by Stirling in agreeing to enter this contract.
- 20.10** Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be

governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

- 20.11** Rights of Access: Stirling's representatives, its Customer and regulatory authorities shall be afforded rights of access to the Supplier's premises and those of any sub-contractor engaged in furtherance of the Order at any reasonable time to attend tests, carry out inspections or check the progress of Quality arrangements in place for the Goods and Services covered by the Order. Inspection will not constitute acceptance of any Goods by Stirling.
- 20.12** The Supplier shall notify Stirling in advance, of any planned change in location of the facility undertaking the contract or of any change in process employed in the delivery of the Goods or Services.
- 20.13** The supplier shall be able to demonstrate to the satisfaction of Stirling that staff are:
- (i) sufficiently experienced, are suitably trained, have the appropriate authority and possess the required qualifications in order to carry out work on Stirling contracts or orders;
  - (ii) aware of their contribution to product or service conformity;
  - (iii) aware of their contribution to product safety; and
  - (iv) aware of the importance of ethical behaviour.
- 20.14** The Supplier acknowledges that Stirling may be required to provide its Customer certain information regarding any Conflict Minerals that may be contained in the Goods. Where the supplier determines that there may exist Conflict Minerals, the Supplier shall promptly perform the necessary due diligence and make reasonable efforts to identify:
- i. the facilities used to process those Conflict Minerals; and
  - ii. the location of each mine or the location of origin of those Conflict Minerals with the greatest possible specificity.

The Supplier warrants that any statements provided to Stirling concerning the Conflict Minerals shall be an accurate reflection of the outcome of the Supplier's due diligence.

The Supplier warrants and represents that, to the best of its knowledge, its Goods do not contain Conflict Minerals and will not be produced with child or forced labour.

- 20.15** Where applicable, the Supplier shall maintain current NADCAP accreditation for all relevant special processes and shall, upon Stirling's request, promptly provide valid certification as evidence of compliance and applicable test results.