

Teledyne Defence Limited - Standard Terms and Conditions of Purchase – Edition 6 (17th August 2011)

1. DEFINITIONS

- 1.1 “Background IP” of a Party shall mean any IP developed, owned or licensed by that Party prior to the Order as well as any IP developed by a Party independently of work performed under the Order.
- 1.2 “Customer” shall mean Teledyne Defence Limited.
- 1.3 “Foreground IP” shall mean IP generated by or on behalf of the Customer during the performance of any work under the Order.
- 1.4 “Intellectual Property (IP)” shall mean any invention, improvement, patent, design, process, information, know-how, copyright work, technical information, data, inventions, techniques, processes, systems, formulae, results of experimentation, designs, statistics, records (including without limitation rights in and to technical processes, systems, methods, software design, algorithms, code, scripts or other computer software), rights in databases, topography rights (whether capable of being patented or registered or not) or application to register any such right and any other intellectual property or intellectual property right of any nature whatsoever in any part of the world.
- 1.5 “Order” shall mean the Customer’s order as placed upon the Supplier and any amendments thereto.
- 1.6 “Party” shall mean either the Customer or Supplier as context may require.
- 1.7 “Parties” shall mean the Customer and Supplier collectively.
- 1.8 “Special Terms and Conditions” shall mean any terms and conditions appearing on the front of the Order.
- 1.9 “Significant Change” shall mean any matter referred to in sub-clause 8.2
- 1.10 “Statement of Work” shall mean the Statement of Work, Specification or other details of Supplies to be provided to the Customer as referenced on the front of the Order.
- 1.11 “Supplier” shall mean the company whose name appears and to whom the Order is addressed.
- 1.12 “Supplies” shall mean all reports, goods, material, services and other items to be delivered under the Order.
- 1.13 “Terms and Conditions” shall mean the Customer’s standard terms and conditions of purchase as set out herein which shall be incorporated by reference on any Orders placed with the Supplier.

2. ORDER ACCEPTANCE

- 2.1 No Order shall be binding upon the Customer until accepted in writing by the Supplier. The Customer reserves the right to reject any acceptance, which is received by the Customer more than fourteen working days after the date of the Order.
- 2.2 The Terms and Conditions are an integral part of the Order and shall apply except to the extent that they may be inconsistent with any Special Terms and Conditions. These Terms and Conditions override any other terms or conditions stipulated or incorporated or referred to by the Supplier, whether in a quotation or tender or in any negotiations, so that these Terms and Conditions are the only terms and conditions upon which the Customer contracts with the Supplier.

3. ORDER OF PRECEDENCE

In the event of any conflict on contract documentation the following order of precedence shall apply:

- (i) the Special Terms and Conditions;
- (ii) these Terms and Conditions
- (iii) the Statement of Work
- (iv) any other document incorporated by express reference

4. AUTHORITY AND VARIATIONS

The Customer shall not be liable for any order, order amendment, variation of requirements or instructions to proceed with Orders unless and until authorised or confirmed on the Customer’s printed Order/Order amendment documentation.

5. PRICES

All prices shall be fixed (non-revisable) and not subject to any form of surcharge or variation.

6. SCOPE OF WORK AND DELIVERY

- 6.1 The Supplier is responsible for the performance of work and for meeting all requirements as detailed in the Statement of Work.
- 6.2 All work shall be performed and deliveries shall be made to the Customer, against a Certificate of Conformity, in accordance with the timescales as stated within the Statement of Work or on the face of the Order.
- 6.3 In the event that the Supplier fails to meet the timescales stated within the Statement of Work or on the face of the order or fails to make progress with the Order so as to jeopardize the overall requirements of the Customer, then the Customer may terminate the Order in accordance with clause 14.1.
- 6.4 The Supplier shall notify the Customer in writing and without delay of any anticipated delays or any change in circumstances that may delay deliveries or impact project dates.
- 6.5 All deliveries shall be made to the Customer’s address as stated on the order or to any other mainland UK destination that the Customer may notify in writing to the Supplier.

7. INSPECTION AND ACCEPTANCE

- 7.1 The Customer and third parties authorised by the Customer (which may include the Customer’s Customer) may inspect and test completed work, inspect work in progress or review plans for future work associated with the Order at the Supplier’s premises at reasonable times and with reasonable notice being given to the Supplier.
- 7.2 Where acceptance tests are defined in the Order or Statement of Work, acceptance of the Supplies shall be subject to completion of the acceptance tests to the satisfaction of the Customer. Where no acceptance tests are defined in the Order or Statement of Work the Customer shall have the right to inspect the Supplies after delivery and acceptance shall take place if the Supplies are satisfactory to the Customer on inspection or, if no inspection is made, the Supplies shall be accepted after they have been taken into use by the Customer.
- 7.3 In the event that the Customer is not satisfied that the Supplies have been delivered in accordance with the Order then the Customer may at its option:
- (i) reject the delivered Supplies either in whole or in part;
 - (ii) give notice to the Supplier to replace or repair promptly the Supplies delivered at the Supplier’s expense and risk;
 - (iii) require the Supplier to pay all the Customer’s reasonable expenses, losses incurred and additional costs directly arising from the failure to deliver the Supplies to the satisfaction of the Purchaser.

8. SUB-CONTRACTING AND SIGNIFICANT CHANGES

- 8.1 None of the work covered by the Order shall be sub-contracted without the prior permission of the Customer. Where work is sub-contracted, the Supplier shall secure rights for the Customer to inspect, test and review work at the sub-contractors premises in accordance with

clause 7.1 above. The Supplier shall remain responsible for the performance of the Order and shall not assign the Order or his right to pay hereunder.

- 8.2 The Supplier shall give the Customer not less than 90 days prior written notice (in reasonable detail) of any organisational, operational or other changes which may affect the Supplier’s performance of the Order, including but not limited to:
- (i) the relocation of any of the Supplier’s plant which is involved in manufacture or supply under the Order;
 - (ii) the transfer of any significant part of the relevant process or manufacturing operations from one plant to another;
 - (iii) any significant changes to or affecting the workforce employed in relation to the Order;
 - (iv) the refusal, suspension, withdrawal or revocation of a relevant quality or capability system or approval

Prompt notice shall be given in respect of (iii) and/or (iv) where the Supplier has no notice thereof.

9. NEW MATERIALS

Unless specifically agreed otherwise all materials to be supplied under the Order are to be new and where Supplies have a shelf life, the Supplier shall define on the delivery documentation the recommended expiry date and date of manufacture. The minimum remaining shelf life shall not be less than 90% on delivery.

10. PACKING, DELIVERY AND MARKING

All Supplies delivered against the Order must be adequately protected against damage and deterioration in transit and delivered to the Customer’s nominated UK delivery address, carriage paid, or as otherwise notified in writing to the Supplier and must bear the Customer’s Order number on the packages thereof. The Supplies shall be sent at the Supplier’s risk until delivered to the Customer at the point specified in the Order unless the Customer otherwise agrees in writing. Unless otherwise provided in the Order all containers and packing materials supplied by the Supplier shall be considered non-returnable and their costs shall be included in the price. Where the Customer receives Supplies as unexamined the Customer’s right subsequently to inspect the Supplies and reject them if they do not comply with the specification or claim for shortage shall not be prejudiced.

11. WARRANTY

- 11.1 The Supplier warrants that the Supplies conform in all respects with the Statement of Work and that the Supplies are free from defects (whether actual or latent) in design, materials and workmanship.
- 11.2 The warranty in sub-clause 11.1 above shall, in respect of each item of the Supplies, continue for a period of twelve (12) calendar months from the date of acceptance of each such item of the Supplies (or other such period as may be agreed by the Parties and recorded as a Special Condition).
- 11.3 If there is a defect in the Supplies during the warranty period, the Supplier shall at its own expense and risk, but at the discretion of the Customer, without delay, either repair or replace the defective Supplies or refund the Customer the price of the defective Supplies. In addition and if requested by the Customer, the Supplier shall provide a report identifying the cause of failure, additional supplies or batches that may be impacted and any repair action taken or to be taken.
- 11.4 The warranty in sub-clause 11.1 shall apply to the Supplies or any part of them replaced or repaired in accordance with these Conditions so that the warranty shall continue for twelve (12) calendar months from the date of acceptance by the Customer of such replaced or repaired parts of the Supplies.
- 11.5 If a breach of warranty by the Supplier causes any of the Supplies not to be available for the Customer’s use within the warranty period for the Supplies then the warranty period for those Supplies shall be extended by the period during which they were not available for use by the Customer.
- 11.6 The Supplier agrees that all warranties attaching to the Supplies shall be capable of being assigned by the Customer to their own customer, without prior written notice to the Supplier.
- 11.7 This clause 11 shall apply in addition and without prejudice to any other rights and remedies available to the Customer.

12. PASSING OF PROPERTY

Property in the subject matter of the Order shall pass to the Customer upon payment provided that any passing of title shall not prejudice either the Customer’s right to reject for non-conformity with the Statement of Work or any other rights that the Customer may have under the Order provided that where advance or progress payments are made title but not risk shall pass to the Customer as soon as items are allocated to the Order. All items so allocated shall be adequately marked and recorded as being the property of the Customer.

13. PAYMENT

- 13.1 Payment shall be made in accordance with the milestone payment plan as detailed on the face of the Order or, where no milestone payment plan is agreed, payment shall be made on acceptance of the Supplies.
- 13.2 Unless otherwise agreed in writing, payment shall be made by the Customer within 60 calendar days following receipt of an acceptable invoice.

14. TERMINATION

14.1 Termination for Default

- (a) If the Supplier is in breach of the Order or of any of the Terms and Conditions (including, without limitation, the warranty at Condition 11) the Customer may give the Supplier a written notice specifying the breach.
- (b) If the breach is capable of remedy, the Supplier shall at its own expense rectify the breach within 15 working days of the date of the notice. If the Supplier does not rectify the breach within 15 working days (or such other period as may be agreed in writing) the Customer may give written notice to the Supplier immediately terminating the Order.
- (c) If the breach is not capable of remedy the Customer shall be entitled to terminate the Order immediately.
- (d) In the event of termination under this clause 14.1 the Customer shall be entitled to reimbursement from the Supplier for all losses, damages and expenses suffered, including without limitation those expenses incurred by the Customer in sourcing replacement parts in order to meet commitments to their own customer.

14.2 Cancellation

- 14.2.1 The Order may be cancelled (in whole or in part) at any time by the Customer immediately upon written notice to the Supplier stating that the Order is cancelled.
- 14.2.2 If such notice is given, the Supplier shall comply with any directions regarding the Supplies given by the Customer.
- 14.2.3 The Customer and the Supplier shall agree a fair and reasonable price for all work reasonably done and materials reasonably purchased by the Supplier for the purpose of carrying out work

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- on the Order up to the date of such cancellation in satisfaction of all sums due to the Supplier by the Customer under this Order.
- 14.2.4 In order to agree such price, the Supplier shall submit an account to the Customer within 60 calendar days from the date of cancellation in a form satisfactory to the Customer.
- 14.2.5 The agreed price, together with any sums paid or due to the Supplier under the Order before the effective date of termination shall not exceed the total price of the Supplies under the Order and such payment shall be the Customer's sole liability in respect of the cancellation.
- 14.3 **Change of Control**
In the event the Supplier is acquired by or merged with any third party or undergoes a change of control, the Customer shall be entitled to suspend the performance of, or terminate, the Order immediately (whether in whole or in part) without incurring any liability whatsoever except in respect of Supplies delivered to the Customer before the occurrence of the events listed in this sub clause.
- 14.4 **Insolvency**
Should the Supplier have a receiver appointed for the whole or part of its assets or if an order is made or a resolution is passed for winding up the Supplier's business then, unless such order or resolution is part of a scheme of amalgamation or reconstruction, the Customer shall be at liberty to:
(i) immediately cancel the Order by notice in writing and without compensation to the Supplier, or,
(ii) give any such receiver or liquidator or other person the option of carrying out the Order.
15. **FORCE MAJEURE**
15.1 The Supplier shall not be liable for delays in delivery due to Force Majeure (meaning an event proved to be beyond the reasonable control of the party seeking to rely upon it) provided that the Supplier promptly notifies the Customer of any delay or anticipated delay as soon as it is known and resumes performance as soon as possible thereafter. However, if such delay exceeds 30 calendar days the Customer shall be entitled to terminate the Order without incurring any liability whatsoever except in respect of that part of the Supplies already delivered and accepted by the Customer prior to such termination.
15.2 Should an event of Force Majeure occur at the Customer's premises, the Customer may wholly (or partly) suspend or postpone any of its obligations under the Order (without incurring any liability) by promptly notifying the Supplier in writing. Such suspension or postponement will continue until the circumstances of the Force Majeure have ceased or been overcome or the Customer notifies the Supplier in writing that it wishes to resume its obligations under the Order, or until the Customer notifies the Supplier that it wishes to terminate the Order in accordance with Condition 14.1 above.
16. **TOOLS AND MATERIALS**
16.1 The Supplier shall not acquire any legal or beneficial interest in any property supplied to it by or on behalf of the Customer (whether on free issue or loan) or paid for by the Customer and held by the Supplier for performance of work on the Order.
16.2 Any such property in the possession or control of the Supplier, shall be held at the Supplier's risk, stored and booked separately from other property, maintained at the Supplier's expense in good and serviceable condition, clearly marked as "Teledyne Defence Limited's property" and only be used by the Supplier for the performance of the Order.
16.3 At the request of the Customer (which may be made at any time) or on completion of the Order, such property issued to the Supplier shall, unless incorporated into the Supplies, be returned promptly to the Customer.
17. **QUALITY CONDITIONS**
17.1 The Supplier shall be subject to all reasonably applicable quality standards which may include but shall not be limited to the following conditions:
(i) The Supplier shall ensure that the Order is carried out in conformity with the quality requirements of its Government approval.
(ii) The Supplier shall ensure that the Order is carried out in conformity with its BS9000 System Approval.
(iii) The Supplier shall ensure that the Order is carried out in conformity with the quality requirements of its ISO 9000 series registration.
(iv) The Supplier shall ensure that the Order is carried out in conformity with the quality requirements of the Supplier's quality approval with the Purchaser (where applicable).
17.2 Where an Order is placed in pursuance of a MoD contract then the Order must satisfy the quality requirements of a MoD contract and may be subject to quality assurance activity at the Supplier's works by the MoD QAR who will advise the Supplier accordingly. Any purchases made by the Supplier in aid of the Order shall be in accordance with the requirements of DEF Stan 05-61 (Part 1) (latest issue) and a Certificate of Conformity will be required.
17.3 The rights of the Purchaser in this Clause 17 are in addition and without prejudice to any rights at law or granted elsewhere in these Terms and Conditions.
18. **CONFIDENTIALITY AND PUBLICITY**
18.1 The Supplier shall treat all information (other than that which is in the public domain or which can be shown to have already been in the Supplier's lawful and unrestricted possession) provided by the Customer as confidential and use such information only for the purpose of performing the Order. Where drawings or other data are issued, the Supplier shall exercise proper custody and control and return/dispose of such in accordance with the Customer's instructions.
18.2 Each Party shall obtain the prior written consent of the other before issuing any publicity in connection with the Order.
19. **INTELLECTUAL PROPERTY RIGHTS**
19.1 All Background IP shall remain the property of the Party introducing the same.
19.2 All Foreground IP shall vest in and be the absolute property of the Customer and the Supplier shall do all necessary acts to vest such Intellectual Property in the name of the Customer, such acts to include (without limitation) the execution of documents.
19.3 The Supplier herewith grants to the Customer an irrevocable, perpetual, non-exclusive, royalty-free licence to use and have used, modify and reproduce any Background IP that is required in order to properly use and exercise the Supplies and any Foreground IP.
19.4 The Supplier warrants that having carried out all reasonable investigations, the Supplies and further sale, incorporation, exercise or other use of the Supplies by the Customer will not infringe any intellectual property rights (including without limit patents, designs, copyright, trade marks, trade secrets, unpublished know how and other rights of a like nature throughout the world registered or unregistered and applications therefore) of any third party existing or pending at the date of the Order.
19.5 The Supplier shall on demand indemnify the Customer against all losses, liabilities, actions, claims, damages, injuries, costs and expenses (including legal costs and expenses) of whatever nature which may be incurred or suffered by or on behalf of the Customer as a result of the infringement or alleged infringement of any third party intellectual property rights arising in connection with the Supplies.
- 19.6 On request to the Supplier by the Customer, the Customer shall be given full control of any proceedings or negotiations in connection with any intellectual property right claims and shall diligently pursue the same unless both parties agree otherwise. The Customer shall consult with the Supplier in relation to such actions.
20. **CUSTOMER ASSETS**
Within 10 working days following completion or termination of the Order, all samples, assets, drawings or proprietary material shall be returned from the Supplier to the Customer in the same condition in which they were provided to the Supplier, subject to reasonable wear and tear commensurate with usage in the performance of the Order.
21. **REMEDIES**
21.1 The Supplier shall upon demand indemnify the Customer in full against all losses, liabilities, actions, claims, damages, compensation, obligations, injuries, costs and expenses (including legal costs and expenses) of whatever nature suffered or incurred by the Customer resulting from any breach of the Order, or any negligence, breach of contract or breach of statutory duty caused by the acts or omissions of the Supplier, its employees, sub-contractors or agents in their performance of the Order or in connection with any defect in Supplies delivered. This indemnity shall continue in force notwithstanding termination for whatever reason of the Order.
21.2 In addition to the remedies described in paragraph 21.1 above, the Customer will be entitled to set off any amounts owed to the Supplier against any amount owed to the Customer.
22. **INSURANCE**
22.1 If the Supplier's employees, agents or sub-contractors are present on the sites of the Customer or such other sites as the Order requires, the Supplier shall effect legal liability insurance of not less than five million pounds (£5,000,000) per event or series of events in respect of loss of or damage to property of the Customer or death or injury to persons resulting from performance of the Order.
22.2 Should the Supplier's legal liability insurance policy cover be in excess of five million pounds (£5,000,000) then the Customer shall have the full benefit of such policy.
22.3 The Supplier shall keep the Customer indemnified against any damage to the Customer's property (including any materials, tools or patterns sent to the Supplier for any purpose) and against any claims for loss or injury to any person or death of any person or to the property of any person to the extent caused by the Supplier's negligence or any act or omission on the part of the Supplier's employees, sub-contractors or agents arising out of the performance of the Order.
23. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
A person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
24. **WAIVER**
Any concession or indulgence made by either Party shall not be considered as a waiver of that Party's rights under the Order unless specifically confirmed in writing.
25. **COMPLIANCE WITH UNITED STATES EXPORT CONTROL REGULATIONS**
25.1 It shall be a condition precedent to the coming into force of any Order and any potential Order that the Supplier shall notify the Customer in writing immediately upon acceptance of the Order, should all or any part of the Supplies (including technical documentation) be subject to any United States export control regulations, including the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR).
25.2 Default of notification by the Supplier to the Customer under 25.1 above shall be deemed an express declaration by the Supplier that all or any part of the Supplies (including technical documentation) are not subject to ITAR, EAR or other United States' export control regulations.
25.3 The Supplier represents and warrants that the information to be provided to the Customer shall be complete and accurate and the Supplier shall forthwith notify the Customer in writing of any evolution of the regulation likely to alter the applicable export control regime. The Supplier understands that the Customer will rely on the accuracy of the information provided in deciding whether to enter into any contract with the Supplier.
25.4 Should the export and/or re-transfer of all or any part of the Supplies including technical documentation be subject to the granting of a license by the US government authorities, the coming into force of this Purchase Order or any potential Contract shall be conditional upon such license being obtained, which the Supplier shall forthwith communicate to the Customer.
25.5 It shall be the responsibility of the Supplier to obtain in a timely manner and maintain all import / export licenses and approvals required to perform any of its obligations under the Order or any potential Contract. The Supplier shall promptly advise the customer of any foreign / export control licence restrictions that may affect the delivery or use of any component / part / technology or other part of the Supplies as soon as the Supplier becomes aware of them. Should the license be withdrawn, not renewed or no longer valid for whatever reason (other than any action or omission of the Customer), then the Customer shall be entitled to rescind the Contract without prejudice to any rights and damages made available to the Customer against the Supplier
25.6 The Supplier shall indemnify and hold the Customer and its own Customers harmless from any and all liabilities, costs and damages resulting from the Supplier's failure to comply with any of the obligations contained within this clause 25.
26. **LAW**
26.1 The construction validity and performance of the Order shall be governed by the Laws of England. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgement, order or award given under English jurisdiction.
26.2 Should any provision of this Order be deemed invalid, illegal or void, then that provision shall be deemed severed from the Order which shall continue in force notwithstanding such severance. The Parties shall nevertheless negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the severed provision.
26.3 English shall be the language for all means of communication between the Supplier and Customer in any matter concerning the Order.
27. **AUTHENTIC PARTS**
"Seller shall only deliver authentic components, devices, pieces, material, modules, assemblies, subassemblies, goods, or the like (hereafter "Parts") that are manufactured by or obtained from original equipment manufacturers (OEMs), original component manufacturers (OCMs), or authorized distributors. Seller shall make available to Buyer, upon request, OEM or OCM documentation that authenticates and provides traceability of the Parts to the applicable OEM or OCM. Purchase of Parts from independent or unauthorized sources is not permitted under this purchase order without the prior written approval of the Buyer. Seller shall maintain policies, procedures, processes, or other such measures to ensure that any Parts sold or delivered by Seller to Buyer are authentic and not counterfeit."