

**CUSTOMER CONTRACT REQUIREMENTS  
UK SIFF/TCAS  
CUSTOMER CONTRACT Sentry 1246**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

**A. PAYMENT**

Pursuant to DEFCON 534 and subject to conditions provided elsewhere in this contract, Buyer shall tender payment to the Seller within 30 days from receipt of a valid invoice as defined by the requirements of this contract.

**B. Drawings**

The preparation of new drawings, or modification of existing drawings, required under this Contract shall be undertaken in accordance with US DoD-D-1000-B , or the UK equivalent DEF STAN 05-10 if the task is carried out by UK sub-contractors.

**C. INDEMNITY IN RESPECT OF INTELLECTUAL PROPERTY RIGHTS (IPR)  
(Clause 5 of the prime contract)**

5.1 Subject to the exceptions, conditions and limitations set forth below, the Seller hereby agrees to indemnify and hold harmless the UK Ministry of Defence (herein referred to as the "Authority") and The Boeing Company (herein referred to as "Boeing") against any claims, suits, actions, liabilities, damages and costs (excluding any incidental or consequential damages) relating to actual or alleged use or infringement (whether by manufacture, use, sale or otherwise) of any patent, registered design, copyright, or other intellectual property arising in or out of the performance of the Purchase Contract or the supply or provision of service to the Authority or Boeing or the use by the Authority or Boeing of any article, drawing, document or other information or service provided under the Purchase Contract.

5.2 This indemnity shall not apply to equipment or services furnished by the US Government or by the Authority or Boeing. The Seller will use reasonable commercial endeavours to secure on the Seller's usual terms indemnities from such sub-contractors equivalent to those specified above and shall take all reasonable steps to enforce any such indemnity which is secured. Provided that if the Authority or Boeing is not legally able to enforce an indemnity condition contained in a sub-contract, for infringement or use of an invention or patent, copyright or similar right, directly against a sub-contractor or supplier of any system, accessory, equipment or part manufactured by a sub-contractor and not manufactured to Seller's detailed design, Seller shall indemnify the Authority and/or Boeing for such infringement, but only to the extent that Seller is indemnified by the sub-contractor or supplier for such infringement.

5.3 The Authority's and Boeing's remedy and Seller's obligation and liability under this Condition are conditioned upon the Authority and/or Boeing giving Seller reasonably prompt written notice after the Authority and/or Boeing receives notices of a suit or action against the Authority or Boeing alleging infringement or receives a written claim of infringement or a written claim for compensation for use. The Seller may at its option conduct negotiations with any party claiming infringement or compensation for use and may intervene in any such claim, suit or action. Whether or not the Seller intervenes, it shall be entitled at any stage of the proceedings to assume or control the defense. The Authority's and Boeing's remedy and Seller's obligation and liability hereunder are further conditioned upon the Authority and Boeing promptly furnishing to Seller all data, records and assistance within the Authority's and Boeing's control material to any such claim, suit or action, and (except as to amounts payable under a judgment) upon Seller's prior approval of the Authority's or Boeing's payment or assumption of any liabilities, damages, royalties or costs for which the Seller is asked to respond.

5.4 The indemnity, obligations and liabilities of Seller and remedies of the Authority and Boeing set forth in this Condition are exclusive and in substitution for, and the Authority and Boeing hereby waive,

release and renounce all other indemnities, obligations and liabilities of Seller and any assignee of Seller, and all other rights, remedies and claims, including claims for damages, direct, incidental or consequential, of the Authority and Boeing against Seller or any assignee of Seller, express or implied, arising by law or otherwise, with respect to any actual or alleged infringement of intellectual property by any Sentry AEW Mk1 (E-3D) System or any system accessory or equipment or part installed therein.

**D. INTELLECTUAL PROPERTY RIGHTS (Clause 6 of the prime contract)**

6.1 Subject to the rights of third parties, to the rights of the Crown arising otherwise than under this Purchase Contract and to the provisions of this condition, all intellectual property subsisting in the results of the work done under this Purchase Contract shall belong to the Seller.

**6.2 Patents and Security Classification**

6.2.1 If the Seller or any person employed by him, whether under sub-contract or otherwise, applies in any country for patent or similar protection for any invention or design made in the course and as part of the work performed under this Purchase Contract, the Seller shall within fifteen (15) days of such application furnish to the Ministry of Defence D/IPR, #2218 P2a, MOD Abbey Wood, Bristol BS34 8JH, United Kingdom and Boeing the application serial number, the filing date, the name of the Applicant and a copy of the application as filed, quoting the number of this Purchase Contract. Under any such protection granted any UK Government Department and any person authorised by a UK Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(i)(a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom and the Seller shall not be entitled to any payment whatsoever in respect of the doing of such an act or the use of the design. The Seller shall, in addition, not be entitled to claim compensation payable directly or indirectly by the Authority in respect of a secrecy order imposed by a Patent Office or Government (upon such invention or design). The rights conferred by this Condition shall be in addition to and not in derogation of rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Design Act 1949.

6.2.2 Pending formal determination of its security classification, the preparation and filing of any application for patent or similar protection shall be handled under conditions of security appropriate to related work under the Purchase Contract. Any application made in the United Kingdom for patent or similar protection shall be sent direct to the Security Section of the Patent Office, state that the application is related to work being carried out under a Ministry of Defence security classified contract and quote the number of the Purchase Contract.

**6.3 Rights to Other Intellectual Property**

6.3.1 In addition to the rights under 6.2 above, Boeing and the Authority shall have the right to copy and to use any Technical Data provided under Condition 7 herein, in support of the Sentry AEW Mk 1 (E-3D) System.

6.3.2 Subject to the proviso at the end of this Condition, if the Seller includes in any information furnished under the Purchase Contract commercially or industrially confidential Data arising from work performed otherwise than under this Purchase Contract or any other contract funded by the Authority or Boeing, the Seller shall identify such Data by applying an appropriate restrictive legend which the Authority and Boeing shall respect and which shall be perpetuated on any copies of that data. Accordingly the Authority or Boeing shall not disclose such Data to any third party except, UK Government Departments, the United States Government, or Sentry AEW Mk1 (E-3D) System In-Service Support bidders and contractors in accordance with the terms of this Condition 6.3.3 and Condition 6.4, or use such data except in accordance with those terms. If, in the exercise of its rights under Condition 6.4 below, the Authority or Boeing wishes to disclose such data to other than UK Government Departments, the United States Government, the Authority and/or Boeing shall inform the Seller of the data to be disclosed and the party to whom the Authority or Boeing intends to disclose the data and will, in addition, apply provisions to any bidder and in any contract under which such disclosure will be made. Further the Authority or Boeing shall prohibit reproduction and disclosure of the Seller's commercially or industrially confidential data by bidders and contractors, and shall prohibit incorporation of such data into other documents except as necessary to submit a bid or perform under a contract, and the Authority and Boeing shall require all recipients of the Seller's commercially or industrially confidential data to perpetuate an appropriate restrictive legend identifying the Seller as the owner of that data on all other

documentation submitted as part of a bid or delivered under a contract except that the obligations of this Condition shall not apply to the Authority or Boeing when any such data:

6.3.2.1 is already known to the Authority or Boeing otherwise than by communication either directly or indirectly from the Seller;

6.3.2.2 is publicly known through no wrongful act of the Authority or Boeing;

6.3.2.3 is rightfully received by the Authority or Boeing from a third party without any obligation of confidence;

6.3.2.4 is subsequently developed by the Authority or Boeing through means independent of the information provided by the Seller;

6.3.2.5 is furnished to a third party by the Seller without any restriction on that third party's right of disclosure;

6.3.2.6 is approved for release by written consent of the Seller.

6.3.3 The Authority or Boeing shall provide reasonable assistance to the Seller in the Seller's efforts to reach a separate confidentiality agreement with any third party to whom the Authority or Boeing intends to disclose Seller's commercially or industrially confidential Data pursuant to 6.3.2 above.

#### 6.4 Conditions of use by the Authority or Boeing

The rights in Seller-owned commercially or industrially confidential Technical Data provided under 6.3 above shall be exercisable free of any payment whatsoever to the Seller, and in particular without payment in respect of any intellectual property owned or controlled by the Seller, in the following circumstances, and subject to the following conditions:

6.4.1 Such rights shall be exercisable solely for the purposes of the Sentry AEW Mk1 (E-3D) System whether within or outside the United Kingdom.

6.4.2 Such rights shall include the right to provide Data for the purposes of defense collaboration between the UK Government and a third party Government or for the purposes of a reciprocal programme for the exchange of data between the United Kingdom and one or more nations of NATO or other nations with whom UK has treaty or similar obligations for mutual defence provided that such provision of data shall not confer on the recipient any right of manufacture or production and on the condition that any recipient of the data agrees to receive it in confidence to the extent it contains Seller's commercially or industrially confidential Data.

6.4.3 Such rights shall include the right to provide Data to the United States Government, which comprises Data pertaining to changes, modifications and improvements in the design of the Sentry AEW Mk1 (E-3D) System and which makes use of US Government unlimited rights Technical Data furnished to the UK in accordance with the UK/US AWACS Memorandum of Understanding. The Seller without prejudice to Condition 6.3.2 undertakes to mark with an appropriate legend any Technical Data that is either proprietary to it or is subject to US Limited Rights. Any Technical Data not so marked may be regarded as subject to US Unlimited Rights.

6.5 The Seller shall not assign or license any intellectual property in such a way as to prejudice the intellectual property rights granted in this Purchase Contract without the prior approval of the Authority or Boeing.

#### 6.6 Sub-contractor's Intellectual Property

6.6.1 In the event that work is to be undertaken for the purposes of this Purchase Contract by a sub-contractor, and the Authority or Boeing does not wish to enter into direct contractual relations with that sub-contractor, the Seller shall, unless the Authority and/or Boeing agrees otherwise, use reasonable endeavours to procure that in so far as legally possible the terms of the sub-contract provide for the Authority or Boeing the same rights as against the sub-contractor as are set-out in this Condition and impose on the sub-contractor the same obligations (the necessary changes being made) as are imposed on the Seller in this Condition.

### **E. MAINTENANCE AND SUPPLY OF E-3D TECHNICAL DATA (Clause 7 of the prime contract)**

7.1 Subject to U.S. Government export approval the Seller undertakes to provide under Orders issued by the Authority or Boeing in accordance with 7.3 below any SIFF / TCAS Technical Data which may be required under this Condition.

#### 7.2 Maintenance of Data

7.2.1 During the continuance of the Purchase Contract the Seller shall maintain at its works at least one set of Data listed at 7.3.1 to 7.3.3 below, relating to any articles delivered or the work performed (as the case may be) under the Purchase Contract.

7.2.2 The master set of any such Data maintained as provided by this Condition can be altered by the Seller before the expiration of the said period provided the configuration thereof representing the Sentry AEW Mk1 (E-3D) is maintained.

7.3 Supply of E-3D Data

7.3.1 The Seller, on receiving a written Order from the Authority or Boeing, hereby undertakes to supply the Authority and Boeing with one or more complete sets or one or more parts of a complete set of Data relating to any Articles or part of Articles or of any other work performed under the Purchase Contract as may be specified in the Order. The Data may be in the form of:

7.3.1.1 E-3D Production and/or Retrofit Drawings

7.3.1.2 Copies of E-3D Specifications and/or documents except that software shall be provided in Object Code only unless such software and associated documentation is being provided without restriction as to use under the Purchase Contract, or as otherwise agreed.

7.3.1.3 Copies of any of the documentation maintained in the Sellers E-3D Technical Library excluding Engineering notes and analyses.

7.3.2 A fair and reasonable price based on the actual work involved in their preparation, shall be paid to the Seller by the Authority or Boeing for any Data supplied to the Authority or Boeing under the provisions of this Condition, as a non recurring task.

7.3.3 The undertaking in 7.3.1 by the Seller to supply Data as aforesaid upon the request of the Authority or Boeing shall be exercisable in relation to all Technical Data as defined in 7.3.1.1. to 7.3.1.3 at any time during the currency of the Purchase Contract.

**F. IMPORT DUTY (Clause 8 of the prime contract)**

8.1 "The Transport Office named in the Purchase Contract" is defined as follows:

8.1.1 For Articles where the Authority or Boeing is responsible for UK Customs, check with the Boeing Buyer.

8.1.2 For Articles where the Seller is responsible for UK Customs clearance and which will subsequently be delivered to the Authority (e.g. by embodiment in the UK on RAF aircraft) - the Seller's commercial freight handling agent in the UK.

8.2 All invoices shall certify that the Articles are in aid of a contract with the Authority or Boeing for defence equipment and shall quote the Contract Number. In addition, all documentation for consignments against 8.1.2 above shall be endorsed "DEFCON 619B applies".

8.3 The Seller shall note that waiver of import duty cannot be granted for items imported by him for his own use in connection with the Purchase Contract, but which are not deliverable items under the Contract. Documentation in respect of such items shall not make any reference to DEFCON 619B, and the Seller shall be responsible for the payment of any import or other duties which may be levied.

**G. EXPORT APPROVALS (Clause 9 of the prime contract)**

9.1 The Seller shall be responsible for securing any export licenses or security clearances necessary to enable him to meet his obligations under the terms of the Purchase Contract. The Authority or Boeing shall provide assistance to the Seller as necessary in relation to any such UK licenses or clearances.

9.2 The Seller shall not enter into any sub-contract with a sub-contractor in the UK for the supply of the articles and services forming this Purchase Contract, except on the terms that the sub-contractor shall not export from the UK (otherwise than to the Seller) any such articles or services without the prior written approval of the Authority or Boeing. The Seller shall ensure that a similar restriction is contained in any further contract derived from such sub-contract, or derived from any sub-contract placed by the Seller on a sub-contractor in the US.

**H. PERMITS AND CLEARANCES (Clause 11 of the prime contract)**

11.1 Access and Visas

The Seller shall submit the necessary applications to obtain visas, multiple entry visas, work permits, vehicle operator permits, residence permits and any other appropriate licenses or permits, as may be required by the Seller, its sub-contractors, subsidiaries or their personnel and dependents. If requested

by the Seller the Authority or Boeing will assist in having such applications processed through the appropriate UK Agency.

**11.2 Security Clearances**

The Seller shall submit requests and applications, in a timely manner, for the required security clearances and passes for the Seller's personnel or personnel of the Seller's sub-contractors or subsidiaries for restricted areas at locations where they are performing work under this Purchase Contract. If necessary, the Authority or Boeing will assist in having such applications processed through the UK Agency. The Seller's personnel and personnel of the sub-contractors or subsidiaries shall not divulge to any unauthorised person, organization or Government whosoever, any classified information of the United Kingdom or its agencies which may become known during the performance of this Purchase Contract.

**I. ITEMS FURNISHED BY THE AUTHORITY (Clause 12 of the prime contract)**

**12.1 Delivery of Authority Furnished Property**

The Authority or Boeing shall make available to the Seller the Authority Furnished Property (AFP) identified at the times stated therein, together with such related data and information as the Seller may request, and the Authority or Boeing may agree to provide, and as may reasonably be required for the intended use of such AFP. The Authority will be responsible for the cost of providing such AFP to the Seller's plant, or such other location as may be agreed between the Authority, Boeing and the Seller. The Authority will also be responsible for obtaining at its expense any temporary import licenses which may be required in connection with the issue of such AFP. The delivery or performance dates will be specified on the Statement of Work and will be based on the assumption that AFP suitable for use will be made available to the Seller at the time stated or, if not so stated, in sufficient time to enable the Seller to meet such delivery or performance dates. In the event the AFP is received by the Seller in a condition not suitable for intended use, the Seller shall, upon receipt thereof, notify the Authority and Boeing of such fact and return such AFP as directed by, and at the expense of, the Authority. The Seller's liability for loss or damage to Authority Furnished Property shall be limited to \$250,000 per incident. Should the Authority notify the Seller that it requires a higher limit of liability (i.e. in excess of \$250,000), the Seller undertakes to provide the necessary ground risk insurance cover and the Authority shall pay the premium for this insurance as an additional cost to the Purchase Contract.

**12.2 Title**

Title to Items of AFP will remain with the Authority. Title will not be affected by the incorporation or attachment thereof to any property not owned by the Authority.

**J. SECURITY MEASURES (Clause 14 of the prime contract)**

14.1 The provisions of this condition are based upon an Agreement between the Government of the United Kingdom and the Government of the United States and shall apply to the extent that this Purchase Contract involves access to or possession of information to which a security classification has been assigned by the Government of the United Kingdom.

14.2 The Government of the United Kingdom shall assign a security classification to each of the aspects of classified information which is furnished, or which is to be developed, under this Purchase Contract and shall advise the Defense Investigative Service, Attn: Deputy Director (Industrial Security) of such aspects and their security classification. If classified information is disclosed orally pursuant to a visit to the Seller by or on behalf of the Government of the United Kingdom, the Seller shall be informed of such security classification. The Defense Investigative Service (DIS) shall ensure that appropriate classification guidance is obtained for each aspect of United Kingdom (UK) classified information which is furnished, or which is to be developed, under the Purchase Contract and that such information is assigned an equivalent United States (U.S.) security classification. The Government of the United Kingdom shall keep current all security classifications, and inform the Defense Investigative Service, Attn: Deputy Director (Industrial Security) of any changes thereto. Each classified aspect of this Purchase Contract shall be safeguarded by the Seller as U.S. classified information of an equivalent security classification category as set forth in the following table of equivalent security classification categories.

Table of Equivalent Security Classification Categories

<u>United Kingdom</u>	<u>United States</u>
UK TOP SECRET	TOP SECRET

UK SECRET  
UK CONFIDENTIAL  
UK RESTRICTED

SECRET  
CONFIDENTIAL  
\*NO EQUIVALENT

Such information shall be subject to the provisions of U.S. laws and regulations. Classified information produced or reproduced in the U.S. in connection with UK classified Contracts shall be marked with the assigned classification markings of both countries as provided. The markings shall be applied in the manner prescribed in the regulations of the country in which the information is produced or reproduced. \*UK Restricted Information shall be safeguarded in accordance with Department of Defense National Industrial Security Program Operating Manual (NISPOM), DOD 5220.22-M dated January 1995.

14.3 The U.S. Seller shall make no use of any U.S. classified information in connection with this Purchase Contract, except with the express written authorization of the U.S. agency responsible for the U.S. classified information.

14.4 UK classified information furnished or developed in the performance of the Purchase Contract shall not be used for any other purpose without the express written authorization of the UK agency responsible for the UK classified information.

14.5 To the extent that aspects of this Purchase Contract have been or may be assigned a security classification as provided in the aforementioned table of equivalent security classification categories, the U.S. Seller shall safeguard all classified aspects of this Purchase Contract and shall provide and maintain a system of security controls with his own organization in accordance with the requirements of:

14.5.1 The Department of Defense Security Agreement (DD Form 441) between the Seller and the Government of the United States, including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this Purchase Contract.

14.5.2 Any amendments to said Manual made after the date of this Purchase Contract, notice of which has been furnished to the Seller by the Cognizant Security Office.

14.6 Representatives of the Cognizant Security Office shall be authorized to inspect at reasonable intervals the procedures, methods and facilities used by the U.S. Seller in complying with the security requirements under this Purchase Contract as locations within the U.S. Should the Government of the United States determine that the U.S. Seller is not complying with the security requirements of this Purchase Contract, the U.S. Seller shall be informed in writing through the Cognizant Security Office of the proper action to be taken in order to effect compliance with such requirements. When UK classified material is, or is likely to be, at risk D HQ Sy will be advised accordingly.

14.7 If subsequent to the date of this Purchase Contract, the security classifications or security requirements under this Purchase Contract are changed by the Government of the United Kingdom or by the Government of the United States and the security costs under this Purchase Contract are increased or decreased, the Purchase Contract price shall be subject to an equitable adjustment by reason of such increase or decreased costs.

14.8 The U.S. Seller agrees to insert security provisions, which conform substantially to the language of this clause, including this paragraph in all sub-contracts awarded to the U.S. contractors hereunder which involve access to classified information. In the event the U.S. Seller proposes to award a sub-contract to other than a U.S. contractor, prior permission must be obtained from the Government of the United Kingdom and Boeing, which, if such contract is approved, will provide an appropriate security requirements clause. For this purpose, DEFCON 659 (Edn. 9/97) – Security Measures is included in this Purchase Contract for sub-contract work placed in the UK.

14.9 The U.S. Seller also agrees that he shall determine that any sub-contractor proposed by him for the furnishing of supplies and services which will involve access to UK classified information in the U.S. Seller's custody has:

14.9.1 If located in the U.S., a current U.S. Department of Defense facility security clearance at the appropriate level and the ability to safeguard classified information properly prior to being afforded access to such classified information.

14.9.2 If located in any other country, been approved by the Government of the United Kingdom to have access to its classified information prior to being afforded such access.

## **K. ACCEPTANCE PROCEDURES**

**16.1 Acceptance of Contract Items**

If the items or services provided conform to the requirements of the SOW, the Authority will accept the Contract Item.

16.2 Signature of the MoD/Boeing Form 640 by the Authority's Representative shall constitute the Authority's acceptance of an Item. Refusal or failure by the Authority to sign the MoD/Boeing Form 640 will signify that the Authority has rejected the Item.

16.3 If an item of supply or service when tendered for delivery does not conform to the requirements of the SOW, the Authority may at its discretion and without prejudice to its rights under the Contract consider accepting the item unless the nonconformity substantially impairs the value of the Contract Item. The Contractor shall, after consultation with the Authority, either correct the nonconformity or pay the Authority an amount equal to the reduction in value of the Contract Item resulting from the nonconformity.

**16.4 Acceptance of Data**

Any Data supplied by the Contractor will be deemed to be accepted by the Authority if a notice of rejection has not been issued by the Authority to the Contractor within sixty (60) days of delivery of such Data. Rejection notices specifying the non-conformance will be delivered to Boeing's Authorised Representative.

**16.5 Acceptance of Services.**

Any service performed by the Contractor shall be deemed to be accepted by the Authority if any notice of rejection has not been issued within 30 days of receipt by the Authority of the MoD/Boeing Form 640. Rejection notices specifying the non-conformance will be delivered to Boeing's authorised representative.

**L. U.S. GOVERNMENT R&D RECOUPMENT  
(Clause 23 of the prime contract)**

The Authority, Boeing and the Seller recognise that the items under this Purchase Contract may require use of technology developed (or being developed) by the Seller or its sub-contractors under contract with the United States Government. Pursuant to the provisions of those contracts the Seller or its sub-contractors may be obliged to assess the Authority and for recoupment of an equitable portion of the development costs applicable to any non-U.S. Government sales and that the price of this Purchase Contract does not cover any amount to cover such assessment. In the event that the U.S. Government does assess the Seller for any amount applicable to the items of this Contract, the Contract price will be adjusted by the amount of such assessment (including any Tax payable on account of such increase in the Contract Price) associated with this assessment.

**M. WARRANTIES (Clause 24 of the prime contract)****24.2 Warranties by the Contractor**

The Seller hereby warrants:

24.2.1 That each Part will at the time of delivery satisfy the requirements of its respective specification referred to in the Contract;

24.2.2 That any new design provided under this Contract will satisfy the requirements of its respective specification stated in the Contract;

24.2.3 That each Part will at the time of delivery be free from any defect arising from faulty manufacture or faulty materials used in its manufacture;

24.2.4 That the materials which will be used in the manufacture of each Part will be of a kind suitable for that purpose;

24.2.5 That the services and data provided shall be performed in a workmanlike manner and in accordance with sound industrial practice to satisfy the requirements of the respective Work Authorisation Form; and

24.2.7 Except to the extent of the preceding warranties in this Condition 24.2, in relation to each Part, in terms of Section 14 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994).

**24.3 Warranties from Sub-contractors**

24.3.1 The Seller shall use best endeavours to obtain from his sub-contractors warranties in favour of the Seller in terms equivalent to the Principal Warranties; and the Seller will provide the Authority and Boeing with a copy of any warranty so obtained.

#### 24.8 Limitation of Liability for Sub-contractors Part

Notwithstanding any other provisions of this Purchase Contract, the Seller's liability to the Authority and Boeing in respect of any Part under the Principal Warranties shall not exceed the liability of the relevant sub-contractor in respect of that Part under any warranty in favour of the Seller; provided that the Seller's liability to the Authority and Boeing will not be limited as aforesaid unless he shall have taken all reasonable steps to enforce any obligation to repair or replace that Part under any such warranty against the sub-contractor upon receiving notice of the Authority's or Boeing's claim. If in taking those steps the Seller deems it appropriate to institute legal proceedings or refer the matter to arbitration, the Authority shall reimburse to the Seller 50% of all costs and expenses reasonably incurred in such proceedings or arbitration and not recovered from the Sub-contractor or any Third Party.

#### 24.9 EXCLUSION OF LIABILITIES.

24.9.1 DISCLAIMER AND RELEASE. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER AND THE REMEDIES OF THE AUTHORITY SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND THE AUTHORITY HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF THE AUTHORITY AGAINST SELLER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY MATERIALS, INFORMATION, SERVICES OR ANY OTHER THINGS PROVIDED UNDER THIS CONTRACT OR MATERIALS AND INFORMATION PROVIDED TO THE AUTHORITY BY A THIRD PARTY, INCLUDING BUT NOT LIMITED TO:

24.9.1.1 ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS;

24.9.1.2 ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE;

24.9.1.3 ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF SELLER; AND

24.9.1.4 ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY AIRCRAFT OR SPARE PART.

24.9.2 EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES. SELLER WILL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF SELLER) OR OTHERWISE, FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY MATERIALS AND INFORMATION, SERVICES OR ANY OTHER THINGS PROVIDED UNDER THIS PURCHASE CONTRACT, OR MATERIALS AND INFORMATION PROVIDED TO THE AUTHORITY BY A THIRD PARTY.

24.9.3 For the purpose of this Article 7, "Seller" is defined as the Contractor, subsidiaries and affiliates, the assignees of each, and their respective directors, officers, employees and agents.

#### 24.10 Reliance on Representations

The Authority acknowledges that in entering into this Contract no reliance has been placed by it on any representation warranty or undertaking (whether express or implied either written or oral) save for any representation or warranty or undertaking expressly given for this Contract.

### **N. PATENTS, etc. (Clause 27 of the prime contract)**

27.1 Under the provisions of Sections 55 and 56 of the Patents Act 1977, and Section 12 of the Registered Designs Act 1949, the Seller is hereby authorised for the purpose of tendering for or performing the Contract (but not otherwise) to use in accordance with the said provisions any invention or design to which the said provisions relate (hereinafter referred to as invention or design except as qualified by the parentheses in Clause 27.8 of this Condition) the existence of which the Seller has notified to the Authority and Boeing prior to the date of the Contract, and to use any model, document or information relating to any such invention or design which may be required for that purpose.

27.2 The Seller shall notify the Authority and Boeing as soon as possible after the date of the Purchase Contract of any invention or design to which the said provisions relate and of which the Seller becomes aware, the use of which, by the Seller, is likely to be required or to have been required for the purpose of the Purchase Contract, and which the Seller would not be or would not have been entitled to use without the authorisation of the Authority and Boeing. Upon receipt of any such notification or upon the Authority or Boeing becoming aware of any such invention or design the Authority and Boeing shall:

27.2.1 not unreasonably delay issue to the Sellers of a written authorisation in accordance with the provisions of Section 55 and 56 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949 if it appears that use by the Seller of such invention or design may have occurred.

27.2.2 not unreasonably withhold or delay issue of such written authorisation in respect of any future use under the Purchase Contract of any such invention or design unless the Seller, the Authority, and Boeing agree on appropriate action to avoid such use; and

27.2.3 issue such written authorisation where the owner (or his exclusive licensee) of any such invention or design takes or threatens in writing to take any action against the Seller in respect of the Seller's use or continued use under the Purchase Contract of any such invention or design.

27.3 The Authority shall meet all costs and liabilities reasonably incurred by the Seller as a consequence of the notification, or of any agreed course of action, received or taken under the terms of Clause 27.2.

27.4 Where an authorisation is given under Clause 27.1 or 27.2, the Seller shall be released by Section 57 of the Patents Act 1977, and Section 12 of the Registered Designs Act 1949, from liability under any license, assignment, assignation or agreement to make any payments, whether by way of royalties, license fees or similar expenses in respect of the Seller's use of any invention or design in accordance with Clause 27.1 or Clause 27.2 of this Condition, or the use of any model document or information relating thereto for the purpose of tendering for or performing the Purchase Contract.

27.5 No royalty, license fee or similar expense in respect of the use by the Seller of any invention or design mentioned in Clause 27.1 or Clause 27.2 of this Condition for the purpose of tendering for or performing the Purchase Contract, or in respect of the use by the Seller of any model, document or information mentioned in Clause 27.1 or Clause 27.2 of this Condition will be allowed as a proper item of cost incurred by the Seller unless it shall have been specifically agreed to by the Authority and Boeing and no such royalty, license fee or similar expense not so agreed shall be included in the Seller's tender, quotation, offer, acceptance or Contract Price. If any claim in respect of use or alleged use of any invention or design as is mentioned in Clause 27.1 or Clause 27.2 of this Condition is made against the Seller it shall be referred to the Authority and Boeing.

27.6 The Seller shall within one (1) month, or such additional time as may be agreed, of the date of the Purchase Contract supply the Authority and Boeing with a statement setting out the details of any license or other agreement under which he would or might, but for the authorisation of Clause 27.1 or Clause 27.2 of this Condition and the release from liability to make payment of Clause 27.4 of this Condition, have been liable to make payment in respect of the use of any invention or design, or use of any model, document or information. Thereafter the Seller shall as soon as may be reasonably practicable upon entering into any license or other agreement as aforesaid after the date of the Purchase Contract and that license or other agreement is not included in the aforesaid statement supply the Authority and Boeing with the details of such license or other agreement. If any claim for any such payment as is mentioned in Clause 27.4 of this Condition is made against the Seller it shall be referred to the Authority and Boeing.

27.7 If and insofar as the Seller has already given to the Authority and Boeing any of the information required under Clauses 27.1, 27.2 and 27.6 of this Condition in connection with a previous contract it shall be sufficient for him to identify such contract and the letter giving such information.

27.8 The Seller shall not be entitled to claim or include as an element in his price any payment by way of royalty, license fee or similar expense for the use in the performance of this Purchase Contract of any invention (whether patented or not), design (whether registered or not), drawing, model, plan, document or information whether owned by the Seller or not, unless the payment has been specifically agreed to by the Authority and Boeing.

27.9 In the event of the Seller placing any sub-contract for the purpose of this Purchase Contract, the Seller shall request or shall require the sub-contractor to request the Authority and Boeing to confer on the sub-contractor like authority in respect of the sub-contract as is conferred on the Seller by

Clause 27.1 or Clause 27.2 of this Condition in respect of the Purchase Contract and the Authority and Boeing will, upon being so requested, confer upon the sub-contractor such like authority, and the provisions of Clauses 27.3, 27.4, 27.5 and 27.8 of this Condition shall apply to anything done by the sub-Contractor for the purpose of tendering for or performing the sub-Contract in like manner as those provisions apply to anything done by the Seller for the purpose of tendering for or performing the Purchase Contract.

27.10 The Seller shall incorporate in any sub-Contract for the purpose of this Contract provisions whereby there shall subsist between the Seller and the sub-Contractor rights and obligations in respect of the sub-Contract corresponding to those subsisting between the Authority, Boeing and the Seller in respect of the Purchase Contract by virtue of Clauses 27.2, 27.6 and 27.7 of this Condition and the Seller shall take all reasonable steps to secure that the sub-Contractor observes the obligations so imposed upon him and shall upon obtaining any information from the sub-Contractor in accordance with any provision so incorporated in the sub-Contract pass that information to the Authority and Boeing without delay.

**ADDITIONAL PROVISIONS:**

**SC43 - PRICE FIXING**

(6) If, in connection with or for the purposes of the Contract, at any time before prices for the Articles have been finally fixed, any sub-contract, the value of which exceeds £25,000 (or such greater amount as shall have been determined by the Authority and specified in the Contract), is placed by the Contractor with a sub-contractor (not being a subsidiary company or firm) otherwise than by acceptance of the lowest competitive tender, then except in so far as the Authority otherwise agrees in writing, the Contractor shall:

(a) include, in any such sub-contract which is not a fixed price subcontract, the provisions set out in Part I of the Appendix to this Condition and, in any such sub-contract which is fixed price sub-contract, the provisions set out in Part II of that Appendix; and

(b) take all reasonable steps to secure the due observance by the subcontractor of its obligations under the said provisions.

In this Clause, the expression "fixed price sub-contract" means a sub-contract in which the prices are fixed at the time the sub-contract is made, including those which contain provision for variation of any prices so fixed by reason only of changes in wage rates or prices of materials.

**Part 1**

Provisions to be included in sub-contracts which are not fixed price sub-contracts

(See Clause (6) above)

(1) Fair and reasonable prices shall be paid to the sub-contractor in respect of the articles to be supplied under this sub-contract, such prices to be fixed as soon as practicable by agreement between the Contractor and the sub-contractor.

(2) In the event of delay in fixing prices fair and reasonable provisional prices shall be fixed by the Contractor and the Contractor reserves the right to alter from time to time the provisional prices so fixed. The Contractor shall pay to the sub-contractor the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the sub-contractor shall pay to the Contractor the amount by which any sum paid on the basis of provisional prices exceeds the sum payable on the basis of prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.

(3) The sub-contractor shall, at all times before prices for the articles to be supplied under this sub-contract have been finally fixed:-

(a) maintain a record of such particulars of the costs of production of the said articles (including, for example, details of times taken and of wage rates paid) as may be available from his normal accounting procedures and of such further particulars of those costs as the Authority (that it is to say, the [here insert the appropriate description of the Authority]) may from time to time reasonably require (including particulars of the costs of production of such substantial parts of any of the said articles as the authority may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy:

Provided that a requirement under this paragraph shall not apply so as to impose any obligation on the sub-contractor to maintain a record of any such further particulars as aforesaid in respect of any costs of production incurred before the date on which that requirement is made; and

(b) when requested by the Authority, furnish a summary of any of the costs mentioned in paragraph (a) above in such form and detail as the Authority may reasonably require; and

(c) afford such facilities as the Authority may reasonably require for his representatives to visit the sub-contractor's premises and examine:-

(i) any or all of the processes involved in the manufacture of the said articles in order to estimate the costs of their production; and

(ii) the records maintained under paragraph (a) above; and

(d) maintain and on request furnish such particulars of his plans for the manufacture of the said articles as the Authority may reasonably require. Such particulars shall on request by the Authority be confirmed or brought up to date in any respect which might significantly affect the costs of production of the said articles.

(4) For the purpose of estimating the cost of production of the articles to be supplied under the main contract. the sub-contractor shall, at all times before prices for those articles have been finally fixed (whether before or after the prices for the articles to be supplied under this sub-contract have been finally fixed), afford such facilities as the Authority may reasonably require for his representatives to visit the sub-contractor's premises and examine any or all of the processes involved in, and the plans for, the manufacture of the last-mentioned articles.

In this Clause, the expression "the main contract" means the contract between the Authority and the Contractor in connection with which, or for the purposes of which, this sub-contract has been made."

## Part II

Provisions to be included in sub-contracts which are fixed price sub-contracts.

(See Clause (6) above)

For the purpose of estimating the cost of production of the articles to be supplied under the main contract. the sub-contractor shall, at all times before prices for those articles have been finally fixed, afford such facilities as the Authority (that is to say, the [here insert the appropriate description of the Authority]) may reasonably require for his representatives to visit the sub-contractor's premises and examine any or all of the processes involved in, and the plans for, the manufacture of the articles to be supplied under this sub-contract.

In this Clause, the expression "the main contract" means the contract between the Authority and the Contractor in connection with which, or for the purposes of which, this sub-contract has been made.

## APPENDIX TO CONDITION NO 48

Provisions to be included in subcontracts

(see Clause (6) above)

(1) The sub-contractor shall, at all times during the course of this subcontract and for a period of two years after final payment of all sums due under this sub-contract or a period of

three years after the final delivery under this sub-contract, whichever period expires sooner, maintain:-

(a) in accordance with his normal procedures, a record of:

(i) the manufacturing facilities and production plans employed by him for the supply of the articles under this sub-contract; and

(ii) the costs incurred by him in the execution of this sub-contract (including, for example, details of times taken and of wage rates paid); and

(b) a record of such further particulars of the costs of production of the said articles as the Authority (that is to say, the [TBD]) may from time to time reasonably require (including particulars of the costs of production of such substantial parts of any of the said articles as the Authority may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy:

Provided that a requirement under this paragraph shall not apply so as to impose any obligation on the sub-contractor to maintain a record of any such further particulars as aforesaid in respect of any costs of production incurred before the date on which that requirement is made.

(2) At any time after prices in respect of the articles to be supplied under this sub-contract have been finally fixed and after delivery thereunder is substantially complete but within the period during which Clause (1) above applies the sub-contractor shall, when requested by the Authority:

(a) furnish a summary of any of the costs mentioned in the said Clause (1) in such form and detail as the Authority may reasonably require; and

(b) afford such facilities as the Authority may reasonably require for his representatives to visit the sub-contractor's premises and examine the records maintained under that Clause.

(3) If at any time during the course of this sub-contract the Authority notifies the sub-contractor that the said records are required for the purpose of assisting the Authority in fixing prices under any other contract (whether made or under negotiation) where the sub-contractor is to supply articles of a similar or substantially similar kind either as a contractor to the Authority or as a sub-contractor to a contractor to the Authority. the sub-contractor shall:-

(a) furnish the like summary and afford the like facilities as are mentioned in Clause (2)(a) and (b) above; and

(b) afford such other facilities as the Authority may reasonably require for his representatives to visit the sub-contractor's premises and examine any or all of the processes involved in the manufacture of the articles to be supplied under this sub-contract.

#### APPENDIX TO CONDITION NO 51

Provisions to be included in relevant sub-contracts:

N. B. This is a Government profit formula risk sub-contract, and accordingly the allowance for profit included in the price (has been) (will be) calculated at the rate applicable to non-competitive risk contracts as agreed between Her Majesty's Government and the Confederation of British Industry in October 1968, as subsequently revised)

(1) In this Condition-

(a) "the Authority" means the (here insert the appropriate description of the Authority);

(b) "the relevant period" means the period during which Clause (1) of Condition No 00 applies (herein insert the appropriate reference to the provisions of the sub-contract relating to the availability of information); and

(c) "the Review Board" means the Review Board for Government Contracts (see Note 2 below).

(2) Where, in relation to the sub-contract, any of the circumstances mentioned in Clause (3) below has arisen in consequence of which there is a question whether any payment should be made by the Authority to the sub-contractor or by the sub-contractor to the Authority, that question may, at any time within the relevant period, be referred by the Authority or the sub-contractor (or by both jointly) to the Review Board for its decision as to the amount (if any) of such payment or repayment:

Provided that-

(i) the sub-contractor's right to make any such reference at a time falling within the last six months of the relevant period shall be conditional on his treating the provisions of Clauses (1) and (2) of the Condition of the sub-contract mentioned in Clause (1) (b) above as applying notwithstanding that they would otherwise cease to apply) for a period of six months from the date on which the reference is made, and

(ii) the Authority may make any such reference at a time falling within the six months immediately following the expiration of the relevant period if, before that expiration, he has given written notice to the sub-contractor that he reserves the right to do so

(3) The said circumstances are that it appears to the Authority or the sub-contractor-

(a) that a profit of or exceeding the upper point of reference or a loss of or exceeding the lower point of reference has been made on the sub-contract, the upper and lower reference points being the points, as agreed between Her Majesty's Government and the BI and set out in paragraph 16 of annexure 2 to Form GC/Stores/2 as revised by subsequent addenda, which are applicable at the time of pricing of the sub-contract; or

(b) that the achievement of a fair and reasonable price for the subcontract was frustrated because the information on which it was based has proved to be materially inaccurate or incomplete.

(4) Where a question is referred to the Review Board under Clause (2) above-

(a) the Contractor and the sub-contractor shall take all reasonable steps to secure proper compliance with any requirement of the Board as to the evidence or other information (whether documentary or oral) to be given or furnished to the Board for the purpose of enabling it to reach a proper decision on the reference, and in particular the Contractor and the sub-contractor shall produce to the Board, or make available for its examination, any document in any way relating to the sub-contract or its implementation which the Board may require for that purpose; and

(b) the Contractor shall take all reasonable steps to secure the due observance by the Authority of such obligations in relation to the reference and the decision of the Review Board

thereon as arise under Condition No 51 of the contract between the Authority and the Contractor in connection with which, or for the purposes of which, the sub-contract has been made:

Provided that this Clause shall not have effect to impose on either party to the sub-contract any obligation to give any evidence or to produce or make available any document which he could not be compelled to give or produce in proceedings before the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(5) The Contractor and the sub-contractor hereby agree-

(a) that the decision of the Review Board on any such reference as aforesaid shall be final and conclusive; and

(b) to take all necessary steps to give prompt effect to that decision, and that where the Board decides that a payment of any amount should be made by the sub-contractor or by the Authority that amount shall be paid direct to the party entitled to it in pursuance of the decision.

(Note 1.-Details of the Government Profit Formula are set out in paragraph 4 of a paper entitled "Profit Formula Review-Arrangements agreed with Industry to be applied from 26th February 1968", as subsequently revised. A copy of the former and a summary of the various revisions thereto are contained in booklet Form GC/Stores/2 (Edition October 1970) and subsequent addenda thereto which may be obtained from the Authority.

Note 2.-The Review Board for Government Contracts is the body set up in pursuance of arrangements relating to the review of Government contracts made between Her Majesty's Government and the Confederation of British Industry; a copy of the document which records these arrangements is contained in booklet Form GC/Stores/2 (Edition October 1970) which may be obtained from the Authority.)

## **DEFCON 17 (Edn 4/00)**

### **Selection of Electronic and Associated Electrical Components for Defence Equipment Equipment Design and Development**

1. Notwithstanding any reference in the Tender or Contract documents to other specifications, all electronic and associated electrical components for use in equipment initially designed and developed under the Contract shall be selected in accordance with the procedures set out in Defence Standard 59-36 Issue 5 Amendment 1.

#### **Variation of Design - Production/Repair/Modification of Equipment**

2. Whenever the Contractor proposes to use an electronic component alternative to that appearing in the drawing, specification or Contract Schedule for the equipment, he shall select that alternative in accordance with Defence Standard 59-36 Issue 5 Amendment 1. He shall also ensure that any alternative proposed by a sub-contractor is selected in accordance with Defence Standard 59-36 Issue 5 Amendment 1.

3. In making his selection, the Contractor shall ensure that none of the specified characteristics of the equipment, concerning performance, safety and reliability, is adversely affected.

4. Where the Contractor or his sub-contractor is responsible for the design of the equipment, he shall include the alternative component in the specification for the equipment. The Contractor shall notify the Project Manager or Equipment Support Manager identified at Box 2 of the Appendix to the Contract of the change.

5. Where neither the Contractor nor his sub-contractor is responsible for the design of the equipment, the Contractor shall apply to the Project Manager or Equipment Support Manager identified at Box 2 of the Appendix to the Contract for a Production Permit, using the application form in section 1 of Defence Standard 05-61 (Part 1). The alternative component shall not be incorporated in the equipment unless a Production Permit has been granted.

6. Unless otherwise stipulated in the Contract, paragraph 5 of Defence Standard 59-36 Issue 5 Amendment 1 shall apply only to components which are critical to safety and, except in those cases where the Contractor is responsible for the design, identified as such in the Contract.

## **DEFCON 21 (Edn 2/98)**

### **Retention of Records**

#### **Application**

1. This Condition applies to deliverable Information identified in a Contract Data Requirement as being subject to DEFCON 21.

#### **Definitions**

2. For the purpose of this Condition, the following definitions apply:

**"Contract Data Requirement"** means a data requirement referred to in the Schedule of Requirements the format and content of which is set out or referenced in DEFFORM 315.

**"Information"** means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to DEFCON 91 or for which the Authority is otherwise licensed).

**"Intellectual Property"** includes patents, registered designs, design rights, topography rights, copyright, database rights and any other rights in Information.

#### **Maintenance of Control Copy**

3. During the period of the Contract and thereafter for not less than two years, or such other period as may be specified in the Contract:

**a)** the Contractor shall maintain at least one copy (hereinafter called the "Control Copy") of all deliverable Information to which this Condition applies;

**b)** the Control Copy shall be maintained in media and formats agreed to by the Authority, and it shall not be altered by the Contractor in any way which changes the build standard except as authorised in writing by the Authority. The Control Copy shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and

**c)** copies of Information held on the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense.

4. If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, the Contractor's obligation under clause 3 of this Condition shall be governed by that contract at the end of the period referred to in clause 3 of this Condition. Otherwise he may destroy or amend the

Control Copy as he sees fit, but before destroying the Control Copy he shall offer to supply it to the Authority and give the Authority 60 days to request such supply.

**Intellectual Property**

5. Nothing in this Condition shall affect the ownership of, or user rights in, any Intellectual Property

**DEFCON 23 (Edn 4/98)** [if Special Jigs, Tooling and Test Equipment are required.]

**Special Jigs, Tooling and Test Equipment**

**Introduction**

1. The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of any other work in accordance with the Contract Schedule of Requirements, unless supplied by the Authority under the terms of SC11 or DEFCON 611. The cost of jigs, tools etc. will not be accepted by the Authority as a direct charge to the Contract, except as hereinafter provided.

2. The Contractor may make a written application to the Authority that certain jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment are special to the requirements of the Contract and that their provision should be met as a direct charge to the Contract. If the Authority accepts the application it shall do so in writing and such jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment shall be referred to as Special Jigs, Tools Etc. for the purposes of this Condition. The Contractor shall not seek approval for procurement of such jigs, tools etc. where these are available under other contracts he already holds from the Authority.

**Pricing**

3. Unless specified otherwise in the Contract, the Contract Price shall include an appropriate amount to enable the Contractor to recover his expenditure on Special Jigs, Tools Etc. including the cost of maintenance and calibration under Clause 8. The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) towards the cost of any Special Jigs, Tools Etc.

**Passing of Property**

4. Except where otherwise specified in the Contract the Special Jigs, Tools Etc. shall become the property of the Authority:

**a)** where SC49 or DEFCON 649 forms part of the Contract, in accordance with that Condition as if they were Articles;

**b)** where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a third party in advance of their being used for the production of Articles under the Contract, upon delivery of the first article so produced for the third party;

**c)** in all other cases upon acceptance of the first Article delivered under the Contract or upon Contract completion, whichever is the earlier.

Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to complete the Contract they shall be treated thereafter as Issued Property for the purposes of SC11 and DEFCON 611.

**Acceptance**

5. Acceptance shall occur at the time the first Articles produced with the Special Jigs, Tools Etc. are accepted in accordance with SC25 or DEFCON 525 or at such other time as shall be stated in the Contract.

**Modifications**

6. Notwithstanding the passing of property to the Authority pursuant to Clause 4. above, the Contractor shall be free to modify the Special Jigs, Tools Etc. as he may deem to be necessary in order to produce the Articles or to perform the Contract work, and the Authority's approval of such modifications shall not be required.

**Accounting and Control**

7. The Contractor shall open and maintain a Register of the Special Jigs, Tools Etc. under the Contract. The Register shall:-

a) be maintained to the satisfaction of the Authority's Equipment Accounting Centre (EAC) as set out in the Equipment Accounting Instructions issued by the EAC and in force at the date of Contract;

b) be available at all reasonable times for audit and inspection by the authorised representatives of the Authority;

c) be maintained for three years after disposal of the Special Jigs, Tools Etc., or for such other period as is specified in the Contract;

8. The Contractor shall, at the reasonable request of the Authority, provide the Authority with a copy of the Register.

9. The Contractor shall be responsible for the safe custody, maintenance and calibration necessary to retain the Special Jigs, Tools Etc. in good order until delivered or disposed of in accordance with written disposal instructions given by the Authority.

**Availability**

10. Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 4 of this Condition, the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory, or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Condition shall not, however, entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given in accordance with Clause 11 below. Where the Contractor holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 11 below, has made a firm written offer to a third party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the Contractor's offer has expired.

**Disposal**

11. As soon as the Special Jigs, Tools Etc. cease to be required by the Contractor to meet the Authority's requirements or for use as specified in clause 10 he shall report accordingly to the Authority. The Authority will instruct the Contractor as to their disposal and where appropriate the method of crediting the Authority with the proceeds thereof less any cost of disposal incurred by the Contractor. The Authority's disposal instructions shall be given within 3 months or such other period as may be stated in the Contract, from receipt of the Contractor's report. Should the Authority fail to issue disposal instructions within this period, a fair and reasonable amount will be agreed for storage and, as instructed by the

Authority, maintenance and calibration of the Special Jigs, Tools Etc., this sum to be a direct charge against the Contract or allocated as an indirect charge in accordance with the company QMAC.

**Use for other than the purposes of the Authority**

**12.** The Contractor shall not use the Special Jigs, Tools Etc. for any purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other, agreement between the Contractor and the Authority. In sub-contracts which include the provisions of this Condition the Contractor shall require that such written approval be obtained direct from the Authority.

**DEFCON 76 (Edn 7/99)****Contractor's Personnel at Government Establishments****Definitions**

1. Reference herein to:

- a) "Government Establishment" or "site" shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations;
- b) "Officer in Charge" shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments; and
- c) "Contractor's Representative(s)" shall be deemed to include the Contractor's employees, agents and sub-contractors.

**General**

2.

- a) The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.
- b) Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge, unless otherwise stated in the Contract, and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract. Any utilities required by the Contractor shall be subject to the charges set out in the Contract.
- c) The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the Contract.

**Liability In Respect of Damage To Government Property**

**3.** Without prejudice to the provisions of [DEFCON 611](#) (Issued Property) and of [DEFCON 612](#) (Loss of or Damage to the Articles), where those Conditions form part of the Contract, the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the

Contractor, or by any of his Representatives, arising from his or their presence on a Government Establishment in connection with the Contract, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within his or their reasonable control.

4. The total liability of the Contractor under Clause 3 herein shall be subject to any limitation specified in the Contract.

#### **Contractor's Property**

5. All property of the Contractor and his Representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

a) where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

b) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

#### **Contractor's Representatives**

6. The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Representative who:

a) was not born in the United Kingdom; or

b) if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

7. The Authority shall issue passes for those Representatives who are approved by it in accordance with Condition 6 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

8. Notwithstanding the provisions of Conditions 6 and 7 hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

9. The decision of the Authority upon any matter arising under Conditions 6 to 8 inclusive shall be final and conclusive.

#### **Observance of Regulations**

10.

a) The Contractor shall ensure that his Representatives have the necessary probity (by undertaking a Basic Check) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

**b)** The Contractor shall comply and shall ensure that his Representatives comply with such rules, regulations and requirements as may be in force whilst at that Establishment.

**c)** Where the Contractor requires information on the Basic Check procedure or security clearance for his Representatives and/or is not in possession of the relevant rules, regulations and requirements and/or requires guidance thereon, he shall apply in the first instance to the Project Manager/Equipment Support Manager.

**d)** When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of such rules, regulations and requirements shall be provided on request by the Officer in Charge.

### **Transport Overseas**

**11.** Where the Contractor's Representatives are required by the Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Project Manager/Equipment Support Manager named for this purpose in the Contract. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes his Representatives to accompany materiel for installation which he is to arrange to be delivered, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of his Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

### **Medical Treatment Overseas**

**12.** Out-patient medical treatment given to the Contractor's Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Establishment, and transportation of the Contractor's Representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

### **Injuries, Disease and Dangerous Occurrences**

**13.** The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

### **Dependants Of Contractor's Representatives**

**14.** No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current MOD rates.

### **Provision Of Funds Overseas**

**15.** The Contractor shall, wherever possible, arrange for funds to be provided to his Representatives overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable

facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Establishment to which the Contractor's Representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

**Health And Safety Hazard Control**

**16.** Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

**a)** The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:

**i)** any health and safety hazards associated with the work to be performed by him or any of his Representatives;

**ii)** any foreseeable risks to the health and safety of all persons associated with such hazards; and

**iii)** any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.

**b)** The Authority shall notify the Contractor of:

**i)** any health and safety hazards which may be encountered by the Contractor or any of his Representatives on the Government Establishment;

**ii)** any foreseeable risks to the health and safety of the Contractor or any of his Representatives, associated with such hazards; and

**iii)** any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.

**c)** The Contractor shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to:

**i)** the hazards, risks and precautions notified by him to the Authority under sub-clause 16.a);

**ii)** the hazards, risks and precautions notified by the Authority to the Contractor under sub-clause 16.b); and

**iii)** the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.

**d)** The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:

**i)** copies of those sections of his own and, where appropriate, his Representatives' Safety Policies which are relevant to the risks notified under sub-clause 16.a);

**ii)** copies of any related risk assessments; and

iii) copies of any notifications and instructions issued by him to his Representatives under sub-clause 16.c).

e) The Authority shall provide the Contractor with:

i) copies of those sections of its own Safety Policies which are relevant to the risks notified under sub-clause 16.b);

ii) copies of any related risk assessments; and

iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under sub-clause 16.c).

## **DEFCON 117 (Edn 6/97)**

### **Supply of Documentation for NATO Codification Purposes**

1. In this Condition:

**"Codification Purposes"** means the application of unique identification to Items and the preparation of such Items in sufficient detail uniquely to distinguish such Items from other items;

**"Codification Authority"** means the United Kingdom Defence Codification Authority, except as provided in Clause 10;

**"Authority's Agent"** means the Service Codification Agencies/Authorities and/or Contractors authorised to undertake NATO codification;

**"Item"** means part or the whole of any Article as defined in SC1 or any other article to the same design or any modification thereof;

**"Items of Supply"** means an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the True Manufacturer's Master Parts List or required to be delivered to the Authority under the Contract.

**"Draft Item Identification"** means the data as detailed in the Annex to this Condition;

**"True Manufacturer"** means the individual, company, firm, corporation, designing authority or government department which, at the lowest level in the contract chain, controls the design, characteristics and production of an item by means of its engineering drawings, specifications and inspection requirements.

2. In the case of an Item of Supply for which the Contractor is the True Manufacturer, the Contractor shall provide the Draft Item Identification to the Codification Authority, or the Authority's Agent named in the Contract, insofar as:

a. the Item of Supply is not already codified in the NATO Codification System; or

b. the Contractor has not previously supplied such information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract.

3. In the case of an Item of Supply for which the Contractor is not the True Manufacturer, the Contractor shall provide the Codification Authority with the True Manufacturer's address and telephone number,

together with the drawing or part number and, if known to the Contractor, the relevant National or International specification/standard.

4. Unless otherwise provided by the Contract, the cost of supplying the information under Clauses 2 and 3 above, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.

5.

a. The Contractor may from time to time be requested to supply additional information necessary for the purpose of the Condition. Insofar as he has the right to do so, the Contractor shall supply such additional data. The extent of such additional information in respect of any Item of Supply shall be governed by the Item Identification Guide issued by the relevant Codification Authority from time to time.

b. For the life of the Contract the Contractor shall provide updating information regarding all modifications or design changes made to the Item of Supply.

c. Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under sub-clause a. above and, in respect of modifications and design changes approved by the Authority, the supply of updating information under sub-clause b. above.

6. Subject to the provisions of Clause 8, the Authority shall have the right, free of charge, to use or have used for Codification Purposes information supplied under the provisions of the Contract, copying being limited to that necessary for such purposes.

7. Subject to the provisions of Clause 8, the data constituting the Draft Item Identification (comprising all or any of the data detailed in the Annex to this Condition) may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other governments, contractors, organisations or individuals who are authorised to have access to such databases by the Authority or the organisation(s) of which the Authority is a member.

8. Where information is supplied by the Contractor under this Condition and is marked to indicate its proprietary nature, it shall be used solely for Codification Purposes and shall not, without the prior written consent of the Contractor, be reproduced or disclosed to any third party, or be included in the databases referred to in Clause 7 above.

9. The Contractor shall not place any sub-contract with a True Manufacturer unless he imposes on the sub-contractor obligations corresponding to those placed on the Contractor by this Condition.

10. If the Contractor is aware that the Items of Supply have already been codified in the NATO Codification System, he shall supply the NATO Stock Numbers to the Codification Authority or the Authority's Agent or other Government Departments. If the Contractor has previously supplied Draft Item Identifications for Codification Purposes on any of the Items of Supply covered by the Contract, or knows that such Draft Item Identifications have been supplied by his sub-contractors or suppliers, he is to state this fact and to indicate to whom they were supplied. He shall not under normal circumstances be required to supply information already provided.

11. Where the True Manufacturer is located in another NATO country the appropriate Codification Authority will be the National Codification Bureau located in that NATO country.

12. Where the True Manufacturer is located in a country which is not a member of NATO the appropriate Codification Authority will be the UK Codification Authority, which may nominate an agent to act on its behalf.

13. The Contractor, sub-contractor or supplier shall contact the Codification Authority for any information concerning the NATO Codification System.

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**ANNEX TO DEFCON 117**

**CODIFICATION REQUIREMENTS FOR DRAFT ITEM IDENTIFICATION**

1. The name, address and telephone number of the True Manufacturer.
2. The Item of Supply name.
3. Part Number.
4. Outline Drawing.
5. Standard/Specification Reference.
6. For single items/component parts, one or more of the following requirements will be needed:
  - a. Basic Material - The base material by which the item is fabricated. \*
  - b. Surface Treatment - The finish by which the item is plated, dipped and/or coated. \*
  - c. Dimensions - Nominal length, width, height, diameter and/or thread size.
  - d. Electrical Characteristics - Nominal voltage, current and/or rated power of the item.
  - e. Pressure Rating - The nominal rated pressure of the item.
  - f. Colour - The overall colour of the item.
  - g. Features - Shape or style, number of holes or slots, cut-outs, keyways etc. For printed circuit boards etc. the primary function for which it is designed e.g. 1st Local Oscillator.
  - h. Radioactive Components - Whether or not the item contains any radioactive materials.
  - i. Software Specification - The software identification number.
  - j. Markings - Markings that indicate the purpose, function or application of the item.
7. For assemblies only, the final assembly drawing and/or parts list.

**\*NOTE:** The True Manufacturer is not required to disclose particulars of his proprietary processes, techniques or material specifications.

**DEFCON 501 (Edn 10/97)**

**Definitions and Interpretations**

1. In the Contract (as defined below) the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:
  - a) "**Articles**" means all goods (excluding Services) which the Contractor is required under the Contract to supply;
  - b) "**the Authority**" means the Secretary of State for Defence;
  - c) "**business day**" means any day excluding:-

i) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party;

ii) privilege days notified in writing by the Authority to the Contractor at least 10 business days in advance; and

iii) such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least 10 business days in advance;

**d) "the Contract"** means the agreement concluded between the Authority and the Contractor, including all specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement. In the event of contradiction, precedence shall be given to the special conditions of contract, followed by the DEFCONs referenced in the Contract and then the Schedule of Requirements;

**e) "the Contract Price"** means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;

**f) "the Contractor"** means the person who, by the Contract, undertakes to supply the Articles, or perform the Service, or both for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;

**g) "the Contracts Branch"** means the authority so designated in the Contract;

**h) "Enabling Arrangement" or "Enabling Agreement"** means an agreement between the Contractor and the Authority containing the terms and conditions subject to which the Authority may place orders for Articles or Services, or both;

**i) "Firm Price"** means a price, agreed for the Articles or Services, or both, which is not subject to variation;

**j) "Fixed Price"** means a price, agreed for the Articles or Services, or both, that is subject to variation in accordance with the variation of price provisions of the Contract;

**k) "Issued Property"** means any item of Government Furnished Equipment (GFE), including any Articles in connection with which the Contractor is required under the Contract to carry out any Service, issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

**l) "loss"** includes damage or destruction;

**m) "materiel"** is a generic term meaning equipment, stores, supplies and spares;

**n) "month"** means calendar month;

**o) "person"** includes any legal or natural person or persons;

**p) "Project Manager" and "Equipment Support Manager"** mean the authority so designated in the Contract;

**q) "Representative of the Authority"** in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision and identified in the Contract or in any subsequent notice to act for the purposes of the provision;

**r) "Schedule of Requirements"** means that part of the Contract which identifies, either directly or by reference, the Articles or Services to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article or Service;

**s) "Services"** means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil;

**t)** the masculine includes the feminine and vice versa and words importing the neuter include the masculine and the feminine;

**u)** the singular includes the plural and vice versa

**2.** . Where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of the Contract either by reference in the special conditions or as invoked by such Defence Standards (DEF-STANS) in the 05-90 series as are called up as part of the Contract, the following provisions shall also have effect:

**a)** "the **Purchaser**" means "the Authority";

**b)** "the **Purchaser's Representative**" means "the Representative of the Authority";

**c)** "the **Project Management Authority**" or "**Progress Authority**" means the authorities so designated in the Contract.

**3.** References to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or instrument as amended or consolidated by any subsequent enactment, order, regulation, or instrument.

**4.** The heading to any Contract condition shall not affect the interpretation of that condition.

**5.** Any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority.

### **DEFCON 509 (Edn 9/97)**

#### **Recovery of Sums Due**

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract, or under any other contract with the Authority, or with any Government Department.

### **DEFCON 516 (Edn 9/97) [For UK suppliers]**

#### **Racial Discrimination**

**1.** The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

2. The Contractor shall take all reasonable steps to secure the observance of the provisions of Clause (1) hereof by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

**DEFCON 520 (Edn 10/98)**

**Corrupt Gifts and Payments of Commission**

1. The Contractor shall not do, and warrants that in entering the Contract he has not done any of the following (hereafter referred to as "prohibited acts"):

**a)** offer, give or agree to give to any Crown servant any gift or consideration of any kind as an inducement or reward;

**i)** for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

**ii)** for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

**b)** enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

2. If the Contractor, his employees, agents or any sub-contractor (or anyone acting on his behalf or any of his or their employees) does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 -1916 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

**a)** to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

**b)** to recover from the Contractor the amount or value of any such gift, consideration or commission; and

**c)** to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

3. In exercising its rights or remedies under this Condition, the Authority shall:

**a)** act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

**b)** give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to);

**i)** requiring the Contractor to procure the termination of a sub contract where the prohibited act is that of a sub- contractor or anyone acting on its or their behalf;

**ii)** requiring the Contractor to procure the dismissal of an employee (whether its own or that of a sub contractor or anyone acting on its behalf) where the prohibited act is that of such employee.

4. Where the Contract has been terminated under Clause 2 of this Condition, the powers given by Standard Condition 14 shall apply as if there had been a failure in delivery.

5. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

**DEFCON 526 (Edn 7/99)**

**Ministry of Defence**

**Notices**

1. All notices, orders, or other forms of communication required to be given in writing ("Notices") under or in connection with this Contract shall:-

- a) be given in writing;
- b) be authenticated by signature or by such other method as agreed between the parties;
- c) be marked for the attention of the appropriate department or officer; and
- d) be marked in a prominent position with the relevant Contract number.

2. Notices should be delivered by:-

- a) hand;
- b) first-class prepaid post (or airmail, in the case of Notices to or from overseas);
- c) facsimile;
- d) telex;
- e) electronic mail, where such a means of communication has been agreed for the purposes of the Contract; or
- f) by Electronic Data Interchange (EDI) message if the Contract contains DEFCON 674 and there is an EDI agreement in existence between the Authority and the Contractor which applies to the Contract.

3. Notices shall be deemed to have been received:-

- a) if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery;
- b) if sent by first-class prepaid post (or airmail, if appropriate), on the third business day (or on the tenth business day, in the case of airmail) after the day of posting;
- c) if sent by facsimile, telex or other electronic means;
  - i) if transmitted between 09.00 and 17:00 hours on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
  - ii) if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

4. The addresses (including electronic addresses) of each party to the Contract to which all Notices shall be sent are those specified in the Contract, or such other address as either party may by written Notice specify to the other for the purpose of this Condition.
5. Where either party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

**DEFCON 531 (Edn 10/97)**

**Disclosure of Information**

1. 'Information' means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract.
2. Subject to Clause 5 and 6 each party:
  - a) shall treat in confidence all Information it receives from the other;
  - b) shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
  - c) shall not use any of that Information otherwise than for the purpose of the Contract; and
  - d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
3. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
  - a) is disclosed to its employees and sub-contractors, only to the extent necessary for the performance of the Contract; and
  - b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract under it.
4. The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 2 and 3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
5. Clauses 2 and 3 shall not apply to any Information to the extent that either party:
  - a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
  - b) has the right to use or disclose the Information in accordance with other conditions of the Contract; or
  - c) can show:
    - i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;

ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;

iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

iv) from its records that the same information was derived independently of that received under or in connection with the Contract;

provided the relationship to any other Information is not revealed.

6. Neither party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Condition.

7. Nothing in this Condition shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

#### **DEFCON 534 (Edn 6/97)**

##### **Prompt Payment (Sub-Contracts)**

Where the Contractor enters into a subcontract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

#### **DEFCON 537 (Edn 6/02)**

##### **Rights of Third Parties**

1. 1. Except as provided in Clause 2 of this Condition and notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.
2. 2. Where, and only where, either by a term in a DEFCON which has been expressly included in the Contract or by another term which specifically refers to this DEFCON, the Contract expressly states that a third party shall be entitled to enforce a term of the Contract:
  - a. a. the said third party shall be entitled to enforce that term in his own right;
  - b. b. the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Condition) relevant to the exercise of that right; and
  - c. c. the third party's rights shall be subject to any provision in the Contract:
    - i. i. that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (such as DEFCON 530 or DEFCON 530A); and

- ii. ii. that stipulates the law and jurisdiction that will govern the Contract (such as DEFCON 529 or DEFCON 529A).

**DEFCON 601 (Edn 01/98)**

**Redundant Materiel**

1. All redundant materiel as defined in DEFCON 501 resulting from work carried out under, or procured for the purposes of the Contract, the costs of which have been paid by the Authority under the Contract, or which is otherwise owned by the Authority, shall be disposed of as follows:

a. On completion of the Contract or earlier if appropriate, the Contractor shall prepare

i. a list of those items of the materiel referred to above which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and

ii. a list of those items of the materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

b. The lists referred to in sub-clause a. i above shall be countersigned by the Project Manager (PM) or the Equipment Support Manager (ESM) and shall be sent to the Contracts Branch named in the Contract.

c. Within three months of the date of receipt of the lists, the Contracts Branch shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of materiel are either;

i. transferred to other subsisting contracts; or

ii. subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor; or

iii. subject to contract, repaired by the Contractor; or

iv. sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable. Materiel designated in accordance with sub-clause 1.a. ii above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

2. The proceeds of the sale of items of materiel sold pursuant to sub-clause 1.c.iv above shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority's Contracts Branch.

3. A list of the items sold by the Contractor shall be sent to the Contracts Branch specified in the Contract together with a statement of the proceeds of sale.

**DEFCON 611 (Edn 7/99) [If supplier will receive Property of British Government]**

**Issued Property**

**General**

1. All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.
2. Neither the Contractor, nor any sub-contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, sub-contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all sub-contractors and other persons dealing with any Issued Property.

**Receipt**

3. Subject to Clauses 4 and 7 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the Contract, the Contractor shall:-

- a) check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;
- b) conduct a reasonable visual inspection; and
- c) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;

and notify the Authority of any defects, deficiencies or discrepancies discovered.

4. Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 3 above shall count from the date on which packages are opened.
5. The Authority shall within a reasonable time after receipt of any notice under Clause 3 of this Condition replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
6. In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 3, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.
7. Clauses 3 - 6 do not apply in the following circumstances:-

- a) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract;
- b) where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract;
- c) where Special Jigs and Tools etc. become Issued Property under DEFCON 23.

**Custody**

8. Subject to Clause 11 below and any limitation or exclusion of liability as may be specified in the Contract, the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in Clause 13.

**9.** The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract.

**10.** If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.

**11.** The Contractor shall not be liable in respect of:-

- a)** defects or deficiencies notified to the Authority in accordance with Clause 3 of this Condition or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 3 of this Condition;
- b)** fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
- c)** Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;
- d)** any loss or damage to Issued Property arising from;
  - i)** aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
  - ii)** ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
  - iii)** the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
  - iv)** riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

#### **Accounting and Return of Issued Property**

**12.** The Contractor shall open and maintain a Register of Issued Property. The Register shall:-

- a)** be maintained to the reasonable satisfaction of the Authority's Asset Accounting Centre (AAC) in accordance with the Equipment Accounting Instructions issued by the Authority and in force at the date of the Contract, or with such other requirements specified in the Contract;
- b)** be available at all reasonable times for audit and inspection by the Representatives of the Authority;
- c)** be retained for three years after disposal of the items of Issued Property, or for such other period as is specified in the Contract.

**13.** At Contract completion the Contractor shall forward a list of Issued Property still held to the Authority's Commercial Officer named in the Contract. Return or disposal of such Issued Property will be as specified in the Contract, or as instructed by the Authority at Contract completion. If no disposal instructions are specified in the Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so.

**Loss of or Damage to the Articles**

1. Until delivery, the risk of loss of or damage to the Articles remains with the Contractor. Without prejudice to any other rights or remedies of the Authority, the Contractor shall make good any such loss or damage however caused or occasioned which occurs before delivery.

2. Clause 1 shall apply notwithstanding:

a) that the Articles may have been inspected by the Authority; or

b) that the property therein may have passed earlier than upon delivery.

3. Unless otherwise agreed and save for the provisions of Clause 4 of this Condition, the Contractor shall not after delivery be at risk in respect of the Articles, except where the Authority rejects any Article under DEFCON 524, in which case the risk in the rejected Article shall revert to the Contractor on the earlier of:

a) the removal of the Article by the Contractor in accordance with Clause 4 of DEFCON 524; or

b) the close of business on the last day of the period in which the Contractor is required to remove the rejected Article in accordance with Clause 4 of DEFCON 524; or

c) the return of the Article by the Authority in accordance with Clause 5 of DEFCON 524.

4. Notwithstanding the provisions of Clause 3 of this Condition, if the Contractor has given notice of objection under Clause 7 of DEFCON 524 he shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the Authority.

5. This Condition shall not apply to any Articles issued to the Contractor by or on behalf of the Authority in connection with which the Contractor is required to carry out any Service. Such Articles shall be subject to DEFCON 611.

**DEFCON 619B (Edn 10/98)**

**Waiver of Import Duty**

1. Articles to which the Contract applies are for defence equipment in respect of which the United Kingdom will waive the application of import duty provided that the UK Customs entry documents are completed by the Transport Office named in the Contract. So that these Articles may be readily identified, invoices for supplies from overseas shall certify that the Articles are in aid of a contract with Her Majesty's Government for defence equipment and quote the Contract number. Any sub-contractors shall be similarly instructed.

2. No import duty shall be included in the Contract Price for Articles imported in accordance with Clause 1.

**DEFCON 621B (Edn 6/97)**

**Transport (if Contractor is responsible for transport)**

The Contractor shall be responsible for transporting the Articles supplied under the Contract from the point of origin to the Consignee. The Contractor shall also be responsible for all loading and unloading of the Articles upon arrival at the site including, where necessary, the provision of special handling equipment.

**DEFCON 649 (Edn 7/99)**

**Vesting**

1. Subject to the following provisions of this Condition:

**a)** each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

**b)** all materiel which the Contractor acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

2 Neither the Contractor, nor a sub-contractor, nor any other person shall have a lien on any Article or materiel which have vested in the Authority under Clause 1 of this Condition for any sum due to the Contractor, sub-contractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Condition are brought to the notice of all sub-contractors and other persons dealing with any such Articles or materiel.

3. Without prejudice to Clause 1 of this Condition, the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.

4. Any Article or materiel which is rejected by the Authority shall immediately re-vest in the Contractor.

5. If the Authority terminates the Contract otherwise than under [DEFCON 656](#), any Article which has not been accepted in accordance with [DEFCON 525](#) and any materiel which has not been incorporated in any Article which has been accepted in accordance with [DEFCON 525](#) shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.

6. Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under Clauses 4 or 5 of this Condition shall be recoverable from the Contractor.

7. The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause 5 of this Condition. If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.

8. The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 5 of this Condition and which are handed over to it by the Contractor or otherwise come into his possession.

9. Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with Clauses 4 or 5 of this Condition, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the

Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them within fourteen days of their re-vesting.

**DEFCON 656 (Edn 10/98)**

**Break**

**1.** The Authority shall, in addition to its power under any other of the Conditions of Contract, have power to determine the Contract at any time by giving to the Contractor written notice, to expire at the end of such period as may be specified in the Contract as the appropriate period for a notice to determine the Contract under this Condition or, if no period be specified, at the end of twenty business days , and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination but subject to the operation of the following provisions of this Condition.

**2.** In the event of such notice being given the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:

**a)** to direct the Contractor, where production has not been commenced, to refrain from commencing production;

**b)** to direct the Contractor to complete in accordance with the Contract all or any of the Articles, or any part or component thereof in course of manufacture at the expiration of the notice and to deliver the same at such time or times as may be mutually agreed on, or, in default of agreement, at the time or times provided by the Contract. All Articles delivered by the Contractor in accordance with such directions and accepted shall be paid for at a fair and reasonable price;

**c)** to direct that the Contractor shall, as soon as may be reasonably practicable after the receipt of such notice;

**i)** take such steps as will ensure that the production rate of the Articles and parts and components thereof is reduced as rapidly as possible;

**ii)** as far as possible, consistent with sub-clause c) i) of this clause, concentrate work on the completion of parts and components already in a partly manufactured state;

**iii)** determine on the best possible terms such sub-contracts and orders for materials and parts and components bought out in a partly manufactured or wholly manufactured state as have not been completed, observing in this connection any direction given under sub clause b) and sub-clause c) i) and ii) of this clause as far as may be possible.

**3.** In the event of such notice being given:

**a)** for Articles;

**i)** the Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and Articles in course of manufacture in the possession of the Contractor at the expiration of the notice and properly provided by or supplied to the

Contractor for the performance of the Contract except such materiel and Articles in course of manufacture as the Contractor shall, with the concurrence of the Authority, elect to retain;

**ii)** the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of all such unused and undamaged materiel and Articles in course of manufacture liable to be taken over by or previously belonging to the Authority and shall deliver such materiel and Articles in course of manufacture in accordance with the directions of the Authority who shall pay to the Contractor fair and reasonable handling and delivery charges incurred in complying with such directions.

**b)** for Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed or partially performed in accordance with the Contract;

**c)** the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract.

Provided that in the event of the Contractor not having observed any direction given to him under Clause 2 of this Condition the Authority shall not under this Clause pay any sums in excess of those which the Authority would have paid had the Contractor observed that direction.

**4.** If in any particular case hardship to the Contractor should arise from the operation of this Condition it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Authority on any matter or thing arising out of this Clause shall be final and conclusive.

**5.** The Authority shall not in any case be liable to pay under the provisions of the

Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total price of the Articles payable under the Contract.

**6.** The Contractor shall in any sub-contract or order, the value of which is £50,000 or over made or placed by it with any one sub-contractor or supplier in connection with or for the purpose of the Contract, take power to determine such sub-contract or order in the event of the determination of the Contract by the Authority under this Condition upon the terms of Clauses 1 to 5 of this Condition save only that:

**a)** the name of the Contractor shall be substituted for the Authority throughout except in sub-clause 3 a) i) where it last occurs and in Clause 4; and

**b)** the period of the notice of determination shall be such period as may be specified in the Contract as the appropriate period for a notice to determine a sub-contract or order under this Condition, or, if no period be specified, twenty business days .

**7.** Claims for payment under this condition shall be made in accordance with the procedure set out in DEFFORM 43.

**DEFCON 659 (Edn 9/97) [Include for suppliers in the UK]**

## **Security Measures**

### **Definition**

**1. In this Condition:**

**a) "Secret Matter"** means any matter connected with the Contract, or its performance which is designated in writing by the Authority as "Top Secret", "Secret", or "Confidential", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

**b) "Employee"** shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.

**The Official Secrets Acts**

**2. The Contractor shall:**

**a)** take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and

**b)** if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

**Security Measures**

**3. Unless he has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of his Employees shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:**

**a)** who is not a British citizen;

**b)** who does not hold the appropriate authority for access to the protected matter;

**c)** in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;

**d)** who is not an Employee of the Contractor;

**e)** who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

**4. Unless he has the written permission of the Authority to do otherwise, the Contractor and his Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:-**

**a)** no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;

**b)** any Secret Matter is at all times strictly safeguarded in accordance with the Manual of Protective Security and upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5. The Contractor shall:

**a)** provide to the Authority:

**i)** upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-clause 4.b.;

**ii)** upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and his Employees are complying with his obligations under this Condition, including the measures taken or proposed by the Contractor so as to comply with his obligations and to prevent any breach of them;

**iii)** full particulars of any failure by the Contractor and his Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

**b)** ensure that, for the purpose of checking the Contractor's compliance with the obligation in Sub-clause 4.b., a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as he may reasonably require.

6. If at any time either before or after the completion or termination of the Contract, the Contractor or any of his Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

#### **Sub-Contracts**

7. If the Contractor proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Contractor shall:

**a)** submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

**b)** incorporate into the sub-contract the terms of the Appendix to this condition and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor";

**c)** inform the Authority immediately he becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract.

#### **Termination**

8. The Authority shall be entitled to terminate the Contract immediately if:

**a)** the Contractor is in breach of any obligation under this Condition; or

**b)** the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

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**Appendix to DEFCON 659  
(Edn 9/97)**

**Ministry of Defence  
Security Measures  
Provisions to be included in relevant Sub-contracts**

**Definition**

1. In this Condition:-

- a) "Secret Matter"** means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as "Top Secret", "Secret", or "Confidential", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
- b) "Employee"** shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given;
- c) the "Authority"** means the Secretary of State for Defence.

**The Official Secrets Acts**

2. The Second Party shall:

- a)** take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911/1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and
- b)** if directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, he is bound by the Official Secrets Acts 1911/1989 (and where applicable by any other legislation).

**Security Measures**

3. Unless he has the written authorisation of the Authority to do otherwise, neither the Second Party nor any of his Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- a)** who is not a British citizen;
- b)** who does not hold the appropriate authority for access to the protected matter;
- c)** in respect of whom the Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- d)** who is not an Employee of the Second Party;

e) who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.

4. Unless he has the written permission of the Authority to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:-

a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;

b) any Secret Matter is at all times strictly safeguarded in accordance with the Manual of Protective Security and upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5. The Second Party shall:

a) provide to the Authority:

i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-clause 4.b.;

ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Condition, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them;

iii) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Sub-clause 4.b., a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative shall be entitled to all such information as he may reasonably require.

6. If at any time either before or after the completion or termination of the Agreement, the Second Party or any of his Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Authority of the matter with full particulars thereof.

### **Sub-Contracts**

7. If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Second Party shall:

a) submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Second Party which the Authority shall reasonably require;

**b)** incorporate into the sub-contract the terms of this Condition and such secrecy and security obligations as the Authority shall direct;

**c)** inform the Authority immediately he becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Agreement.

**Termination**

**8.** The First Party shall be entitled to terminate the Agreement immediately if:

**a)** the Second Party is in breach of any obligation under this Condition; or

**b)** the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.