

GENERAL CONDITIONS OF PURCHASE FOR GOODS AND SERVICES

1. INTERPRETATION

1.1 In these terms and conditions ("General Conditions"):

"Background IPR" means the Intellectual Property Rights in the Goods, Deliverables and/or in any process, device, tool or technique used by a Party in fulfilling its obligations under the Contract and which Intellectual Property Rights already exist at the date of the Contract or are generated otherwise than through the performance of work under the Contract;

"Contract" means the Purchase Order, which shall incorporate these General Conditions, any Special Conditions and the Supplier's acceptance of the Purchase Order;

"Deliverables" means all documents, data and materials developed by or on behalf of the Supplier in performing the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, specifications and reports (including drafts) and all updates, additions and revisions to them (excluding the Goods);

"Good Industry Practice" means the exercise of that degree of skill, care, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor who is to supply the Services and is seeking in good faith to comply with its obligations under the Contract;

"Goods" means any goods, materials or articles (including any part or parts of them) to be supplied to the Purchaser by the Supplier pursuant to the Contract;

"Intellectual Property Rights" means all inventions, patents, registered designs, design rights, database rights, and copyrights, know-how and trademarks (whether registered or not) and the goodwill attaching to any of them and applications for any of them and any right or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

"Party" means either the Purchaser or the Supplier as applicable, together being the "Parties";

"Purchase Order" means the Purchaser's written instruction to supply the Goods and/or Services, including any statements of work, specifications, descriptions or other documents attached to, or referred to in the Purchase Order;

"Purchaser" means the QinetiQ (being QinetiQ Pty Ltd (Australian Business Number (ABN) 68 125 805 647) or Air Affairs (Australia) Pty Ltd (ABN 94 006 238 839) or Aerospace Training Services Pty Ltd (ABN 13 074 625 513)) that has issued, and is named on, the Purchase Order;

"Related Body Corporate" has the meaning given by section 9 of the *Corporations Act 2001* (Cth);

"Services" means any services or work to be performed by the Supplier pursuant to the Contract, including any Deliverables;

"Special Conditions" means those terms and conditions included with the Purchase Order that may add to or amend these General Conditions;

"Supplier" means the company, firm or individual named as such on the Purchase Order; and

"Supplier Personnel" means all persons employed and/or engaged by the Supplier to perform the Supplier's obligations under the Contract, including but not limited to its directors, officers, employees and agency workers and those of its subcontractors, agents, representatives and advisers.

1.2 In the Contract references to: (i) any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; (ii) the masculine include the feminine and the neuter and vice versa; (iii) the singular include the plural and vice versa; and (iv) clauses are references to the clauses set out in these General Conditions. The headings to these General Conditions will not affect their interpretation.

2. ORDER OF PRECEDENCE AND APPLICATION OF CONDITIONS

2.1 The Contract between the Purchaser and the Supplier comprises the:

- a. Special Conditions (if any);
- b. the Purchase Order (other than the Special Conditions); and
- c. these General Conditions.

2.2 If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

2.3 These General Conditions, and any Special Conditions, are the only conditions upon which the Purchaser is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other conditions. The Supplier waives any right which it might otherwise have to rely on its terms and conditions.

2.4 Unless acceptance of these General Conditions and any Special Conditions by the Supplier expressly occurs at an earlier time, the commencement of work in connection with the supply of the Goods or the performance of the Services by the Supplier shall be deemed to be conclusive evidence of the Supplier's acceptance of these General Conditions and any Special Conditions.

3. QUALITY

3.1 The Goods and Services shall conform in all respects with the requirements of the Contract (including any variations made in accordance with Clause 21.2).

3.2 The Goods shall be safe, durable, free from defects in design, materials and workmanship, fit for the purpose for which they are supplied and for any other purpose made known to the Supplier by the Purchaser in writing, and the Services shall be performed with professional skill and care and in accordance with Good Industry Practice.

- 3.3 Unless otherwise stated in the Contract, the Goods and Services shall conform to all relevant Australian and international standard specifications and with the requirements of any applicable statutes, orders, regulations or bylaws from time to time in force, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and Services.
- 3.4 If any of the Goods or Services fail to conform to any of the provisions in this Clause 3, the Purchaser shall be entitled to any remedies available at law or under the Contract.
- 3.5 The Supplier shall at all times during the term of the Contract maintain a suitable quality management system such as one which complies with the principles of the ISO 9001. For the avoidance of doubt, this does not extend to a requirement on the Supplier to obtain certification under ISO 9001 unless otherwise stated in the Contract.

4. TERM

- 4.1 Contract shall commence on the date of acceptance or deemed acceptance of these Conditions in accordance with Clause 2.4 and continue until completion of the Parties' obligations under the Contract or the date of termination of the Contract in accordance with these Conditions.

5. DELIVERY OF GOODS / PERFORMANCE OF SERVICES

- 5.1 The Goods shall be delivered by the Supplier carriage insurance and duty paid to the place stated in the Purchase Order or such other place of delivery as is specified by the Purchaser in writing prior to delivery of the Goods and in accordance with any additional instructions stated on the Purchase Order. Unless otherwise agreed by the Parties in writing, delivery shall occur only when the Supplier has unloaded the Goods at the place of delivery and/or the Goods have been signed for by or on behalf of the Purchaser.
- 5.2 Time for delivery shall be of the essence. The Goods shall be delivered on the date stated on the Purchase Order or, if no such date is stated, within twenty-eight (28) days of the date of the Purchase Order. Any Services and associated Deliverables shall be performed and delivered by the times specified in the Purchase Order.
- 5.3 Goods shall be delivered to, and only accepted by, the Purchaser during the following hours: Monday – Friday: 09.00 – 16.00 hours, except gazetted Public Holidays at the delivery location stated on the Purchase Order.
- 5.4 If the Purchaser provides any access to premises, labour or equipment in connection with the delivery of, or the performance of any services forming the whole or part of, the Goods, such access shall be provided at the risk of the Supplier.
- 5.5 If Goods are delivered to the Purchaser in excess of the quantities ordered, the Purchaser shall not be bound to pay for the excess. The excess will remain at the Supplier's risk and will be returnable at the Supplier's expense.
- 5.6 The Supplier must obtain and maintain in force any necessary licences, permits, accreditations, regulatory approvals or other documented authority (however described) required by law and necessary for the delivery of the Goods and/or performance of the Services under the Contract.
- 5.7 In addition to any express obligations set out in the Contract, the Supplier shall provide the Purchaser with:
- regular progress updates and/or attend progress meetings in relation to the Supplier's performance under the Contract, as reasonably requested by the Purchaser from time to time; and
 - such data as the Purchaser may reasonably require from time to time in order to meet its own reporting requirements and any reporting requirements under relevant customer contracts.

6. LABELLING AND PACKING

- 6.1 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows the Purchase Order number, date of order, number of packages, type and quantity of Goods, the net, gross and tare weights of the Goods and contents and, in the case of part delivery, the outstanding balance remaining to be delivered, along with any other documents as required by the Contract.
- 6.2 The Supplier shall ensure that the Goods shall be packed in a manner appropriate for the Goods, in accordance with best practice for environmental packaging current from time to time and marked in a proper manner. The details of the contents shall be clearly marked on each container and all containers of hazardous materials shall bear prominent and adequate warnings in English and must be accompanied by emergency information in English, in the form of written instructions, labels or similar markings. Unless otherwise agreed, no packaging materials will be returned.

7. TITLE AND RISK

- 7.1 The Goods shall remain at the risk of the Supplier until delivery to the Purchaser, pursuant to Clause 5, is complete. Unless the Goods are rejected pursuant to Clause 8, title to the Goods shall pass to the Purchaser at the time of delivery or at the time of payment for the Goods if payment occurs earlier than the time of delivery.
- 7.2 Where the work under the Contract involves the Supplier being given custody or control of equipment, assets or other property of the Purchaser (or any customer of the Purchaser or other party on whose behalf the Purchaser is acting), then such equipment, assets or property shall be at the risk of the Supplier whilst they are in the Supplier's custody or control (which shall include any period where the equipment, assets or property are being transported using a carrier arranged by the Supplier).

8. INSPECTION AND REJECTION

- 8.1 The Purchaser shall have the right to inspect and test the Goods and any Deliverables associated with the Services prior to or within a reasonable time after their delivery at such times as the Purchaser may reasonably require.
- 8.2 If the Goods or Services do not conform to the Contract, including any statements of work, specifications, requirements or descriptions referred to in the Contract, the Purchaser may serve a written remediation notice on the Supplier, requiring it immediately to take such action as is necessary to ensure conformity to the reasonable satisfaction of the Purchaser. Such action may include providing replacement Goods and/or re-performing the Services. Where the Contract contains acceptance criteria relating to the delivery of the Goods and/or Services, these shall apply in addition to the provisions of this Clause. 8.3 Notwithstanding Clause 8.2, where any Goods or Services do not conform to the Contract, the Purchaser shall be entitled to exercise any other remedies available at law or under the Contract, including but not limited to:

- a. to reject the Goods (in whole or in part) and return them to the Supplier, at the risk and cost of the Supplier, on the basis that a full refund for the Goods so returned shall be immediately paid by the Supplier; and
 - b. to refuse to accept or pay for any further deliveries of the Goods or Services but without any liability to the Supplier.
- 8.3 Any omission by the Purchaser to undertake, or any approval given during or after, such inspection or testing shall not constitute a waiver of any of the Purchaser's rights or remedies in respect of the Goods or Services. Any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

9. PRICE AND PAYMENT

- 9.1 The price of the Goods and Services shall be as stated in the Purchase Order and shall, unless otherwise agreed in writing by the Purchaser, be exclusive of Goods and Services Tax (GST) but inclusive of all other charges.
- 9.2 The Supplier may invoice the Purchaser on completion of the milestone(s) specified in the Purchase Order or (where no milestones are specified) when the Goods and/or Services and any Deliverables have been delivered. . The Supplier shall, in any event, invoice the Purchaser within six (6) months of completion of the work under the Contract. If the Purchaser has to investigate its own records to deal with payment queries after six (6) months, the reasonable costs of so doing may be deducted from the amount due.
- 9.3 Unless otherwise specified in the Purchase Order, the Purchaser shall pay the price of the Goods and Services which meet the requirements of the Contract, thirty (30) days from receipt of a valid invoice at the invoice address given on the Purchase Order. The Supplier is not entitled to submit an invoice until the Goods and/or Services have been delivered and invoices submitted by the Supplier must not bear a date prior to the date on which the Goods and/or Services are delivered.
- 9.4 The Purchaser may at its sole option elect to pay for Goods and Services by credit card. Without prejudice to Clause 9.3, where payment is by credit card, the Purchaser shall make reasonable endeavours to provide the Supplier with its credit card number within 1 working day of the date of placement of the Purchase Order by the Purchaser with the Supplier. The Supplier shall be responsible for claiming such credit card payments from the Purchaser's nominated card merchant and must claim within a maximum period of 6 weeks from the date that the card number is supplied, failing which any such claim will cease to be valid. The Purchaser shall not be liable for any failure or delay in such payments directly or indirectly attributable to its nominated card merchant.
- 9.5 Any invoice which, when taking into account all other invoices already submitted, is for a cumulative value above that of the Purchase Order will be rejected by the Purchaser.
- 9.6 The Purchaser cannot guarantee to make payment on time for any invoice which is not sent to its official Accounts Payable address as detailed on the Purchase Order.
- 9.7 The Supplier shall not be entitled to claim any payment following the expiry of one (1) year after the date of completion of the supply of the Goods or Services to which they relate.
- 9.8 Without prejudice to any other rights or remedies, the Purchaser reserves the right to set off any amount owing at any time from the Supplier to the Purchaser against any amount due to the Supplier under the Contract.
- 9.9 If the Purchaser fails to pay any sum properly due pursuant to the Contract, the Purchaser shall, upon written request, pay simple interest to the Supplier on such sum from the due date for payment specified in this Clause 9 at an annual rate equivalent to [Australian Tax Office \(ATO\) sourced General Interest Charge \(GIC\) rate](#) current at the due date of payment, accruing on a daily basis until payment is made.

10. WARRANTY

- 10.1 Unless otherwise specified in the Purchase Order, the Goods and any Deliverables associated with the Services shall comply with the requirements of the Contract for twelve (12) months from putting into service or eighteen (18) months from the date of delivery in accordance with Clause 5, whichever shall be the shorter.
- 10.2 If the Purchaser, within the warranty period or within thirty (30) days thereafter, gives written notice to the Supplier of any defect in any Goods or Deliverables arising during the warranty period under proper and normal use, the Supplier shall, without prejudice to any other rights or remedies which the Purchaser may have, immediately take such action as is necessary to remedy the defects (whether by repair, replacement or re-performance as the Purchaser shall elect) at the Supplier's expense.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Ownership of Background IPR shall remain unaffected by the terms of the Contract. For the avoidance of doubt, all Intellectual Property Rights in any statements of work, specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser shall, subject to the rights of third parties, remain vested solely in the Purchaser.
- 11.2 The purchase price for the Goods and Services includes all the irrevocable, perpetual, worldwide, non-exclusive, royalty-free rights (with a right to grant sub-licenses) for the Purchaser to use all Background IPR of the Supplier incorporated in the Goods and Deliverables for its own purpose and in its business anywhere in the world.
- 11.3 The Supplier hereby assigns to the Purchaser, with full title guarantee and free from all third party rights, all new Intellectual Property Rights generated in the course of supplying the Goods and/or Services pursuant to the Contract ("Foreground IPR").
- 11.4 The Supplier shall keep the Purchaser indemnified in full against all liability, actions, suits, claims, demands, losses, charges, costs and expenses (including legal and other professional fees and expenses) incurred by the Purchaser as a result of or in connection with any infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Goods and/or Services (as applicable).

12. INSURANCE

- 12.1 The Supplier shall procure and maintain with a reputable insurer, insurance policies in respect of its liabilities under or in connection with the Contract, including:
- a. workers compensation insurance or registration as required by law;
 - b. public liability insurance (with product liability cover where the Supplier is supplying Goods);

- c. professional indemnity insurance (where the Supplier is supplying Services), in each case with the level of cover agreed in writing with the Purchaser or, in the absence of such written agreement, with a level of cover appropriate for the Goods and Services to be supplied under the Contract; and
 - d. such other insurances and on such terms and conditions as a prudent supplier, providing good and services similar to the Goods and Services, would procure and maintain.
- 12.2 The Supplier will provide all facilities, assistance and advice reasonably required by the Purchaser or the Purchaser's insurers for the purpose of dealing with any action, claim or matter arising out of the Supplier's performance of the Contract.
- 12.3 The Supplier shall produce to the Purchaser upon request, copies of a broker's verification of insurance to demonstrate that the required insurance cover referred to in Clause 12.1 is in place. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Contract.

13. TERMINATION

- 13.1 The Purchaser shall have the right at any time to terminate the Contract (in whole or in part) for convenience by giving the Supplier not less than thirty (30) days' written notice whereupon all work on the Contract (or the part of the Contract so terminated) shall be discontinued. The Supplier will take all reasonable steps to mitigate the effects of termination. Upon termination under this Clause 13.1, the Purchaser shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any indirect or consequential loss nor shall it exceed the price that would have been payable to the Supplier if the Contract (or the relevant part of the Contract) had not been terminated. Title in all Goods and any Deliverables associated with the Services shall pass to the Purchaser on such payment and (if not already delivered) shall be delivered to the Purchaser at that time.
- 13.2 Either Party shall have the right to terminate at any time by giving the other Party written notice to terminate the Contract immediately if:
- a. the other Party commits a material breach of the Contract, which (if capable of remedy) it fails to remedy within thirty (30) days of receipt of written notice of the same;
 - b. the other Party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - c. any distress, execution or other process is levied upon any of the assets of the other Party;
 - d. the other Party enters into any kind of composition, rescheduling, scheme, compromise or arrangement with its creditors generally (or any class of them) as a result of financial difficulties, commits any act of bankruptcy or if an order is made or an effective resolution is passed for the other Party's winding up (except for the purposes of amalgamation or reconstruction as a solvent company), or if a petition is presented to Court, or if a receiver/manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party's undertaking or assets;
 - e. the other Party ceases or threatens to cease to carry on its business;
 - f. the financial position of the other Party deteriorates to such an extent that in the reasonable opinion of the non-defaulting Party, the capability of the other Party to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - g. any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 13.2c and 13.2d.
- 13.3 The expiry or termination of the Contract, however arising, will be without prejudice to the rights and obligations of the Parties which have accrued prior to expiry or termination. The provisions of Clauses 10 (Warranty), 11 (Intellectual Property Rights), 12 (Insurance), 13.3, 14 (Remedies), 15 (Health, Safety and Security), 16 (Confidentiality), 17 (Assignment and Subcontracting), 18 (Dispute Resolution), 19 (Publicity), 20 (Notices), 21 (Miscellaneous), 24 (Data Protection) and 29 (Governing Law and Jurisdiction) shall survive expiry or termination of the Contract, together with any provisions hereof which by their nature should survive the expiry or termination of the Contract, howsoever arising.

14. REMEDIES

- 14.1 Without prejudice to any other rights or remedies which the Purchaser may have under the Contract or otherwise, if any Goods or Services are not supplied in accordance with, or the Supplier fails to comply with, the Contract and the Supplier has failed to remedy such breach of the Contract within thirty (30) days of receipt of a written remediation notice from the Purchaser, the Purchaser shall be entitled to avail itself of one or more of the following remedies, whether or not any part of the Goods or Services have been accepted by the Purchaser:
- a. to require the Supplier to provide replacement Goods and/or re-perform the Services;
 - b. to reject the Goods (in whole or in part) and return them to the Supplier, at the risk and cost of the Supplier, on the basis that a full refund for the defective Goods shall be immediately paid by the Supplier;
 - c. to refuse to accept or pay for any further deliveries of the Goods or Services but without any liability to the Supplier;
 - d. to carry out, at the Supplier's expense, any work necessary to make the Goods or Services comply with the Contract, including obtaining the Goods or Services in substitution from another supplier; and
 - e. to claim such damages as may have been sustained as a result of the Supplier's breaches of the Contract.

15. HEALTH, SAFETY AND SECURITY

- 15.1 The Supplier shall ensure that the Goods are designed and/or constructed and the Services are supplied so as to be safe and without risk to the health and safety of persons using or affected by the same.
- 15.2 The Supplier must not provide Goods containing Asbestos Containing Material (as defined in subregulation 5(1) of the Australian *Work Health and Safety Regulations 2011* (Cth) and must not take any Asbestos Containing Material onto the premises of the Purchaser or the Purchaser's customer.

- 15.3 The Supplier represents and warrants that the Supplier has made available to the Purchaser adequate health and safety information about the Goods, including hazardous substances, and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
- 15.4 The Supplier shall immediately notify the Purchaser in the event that the Supplier or Supplier Personnel commit any incidents in connection with the performance of the Contract that give rise to:
- obligations under applicable health and safety law for reporting of injuries, diseases and dangerous occurrences;
 - a breach of applicable health and safety law or the site requirements in force at the premises of the Purchaser or its customer (as the case shall require); or
 - an investigation or inquiry by the appropriate health and safety regulatory body or any other public body or authority.
- 15.5 The Supplier shall (and will procure that Supplier Personnel):
- comply with the security requirements (including those contained in the Defence Security Principles Framework) notified to the Supplier by the Purchaser or its customer from time to time;
 - obtain any security clearances required to perform the Contract and provide such evidence as the Purchaser may reasonably require to verify that the security clearances are in place;
 - manage all security clearances sponsored by the Supplier in accordance with the relevant obligations imposed by the issuing authority;
 - comply with the Purchaser's reasonable security policies and requirements;
 - inform the Purchaser immediately it becomes aware of any breach by Supplier Personnel of any secrecy or security obligation relating to the Contract; and
 - co-operate with any investigation relating to breaches of secrecy or security.
- 15.6 Where any access to premises of the Purchaser or the Purchaser's customer is necessary in connection with delivery, performance or installation under the Contract, the Supplier (and will procure that Supplier Personnel) shall:
- only enter such premises for the purpose of performing the Contract;
 - obtain any necessary permission to proceed from the Purchaser and complete any required Purchaser or customer induction training before commencing work at such premises; and
 - at all times comply with any security and health and safety regulations currently in force at such premises, as notified to the Supplier from time to time, including any security policies required by the Purchaser or its customer for specific tasks or activities (which may include but is not limited to Supplier Personnel holding and maintaining security clearances).
 - The Purchaser may require the removal of any Supplier Personnel from the premises of the Purchaser or its customer if in the reasonable opinion of the Purchaser their performance or conduct is or has been unsatisfactory or such Supplier Personnel have failed to comply with the provisions of this Clause 15. On receipt of such request, the Supplier shall promptly remove the relevant Supplier Personnel and replace them with a suitably qualified and competent replacement, unless a replacement is unnecessary.
- 15.7 Compliance with this Clause 15 is a condition of the Contract and any failure by the Supplier to comply with this Clause shall constitute a material breach of the Contract.

16. CONFIDENTIALITY

- 16.1 Each Party shall keep confidential and not disclose or knowingly permit to be disclosed to any person or use other than for the purpose of the Contract, any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one Party to the other Party or its representatives and any other confidential information concerning the other Party's business or its products which the other Party may obtain or learn, except as permitted by this Clause 16.
- 16.2 The receiving Party may disclose the disclosing Party's confidential information without prior written consent to Supplier Personnel who need to know the same for the purpose of discharging the receiving Party's obligations or exercising its rights under the Contract and it shall ensure that such Supplier Personnel are subject to like obligations of confidentiality as are contained in this Clause 16.
- 16.3 The obligations of confidentiality owed by each Party to the other Party in this Clause 16 shall not apply to information which:
- is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations whether arising under the Contract or otherwise);
 - is known without restriction to the receiving Party at the time of disclosure without breach of any obligation of confidentiality;
 - becomes known to the receiving Party without restriction from an independent source having the right to convey it; or
 - is shown to the reasonable satisfaction of the disclosing Party to have been generated independently by the receiving Party.
- 16.4 Nothing shall prevent the disclosure by the receiving Party of the disclosing Party's confidential information to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is subject or pursuant to any order of court or other competent authority or tribunal provided that:
- the receiving Party first gives the other Party, where possible, the opportunity to make and/or manage the necessary disclosure;
 - where the receiving Party is required to make the disclosure itself, the disclosure made is the minimum required, having regard to all possible exemptions from disclosure, and is made under maximum possible constraints of confidentiality; and
 - to the extent permitted by applicable law, the other Party is provided with full information on the intended disclosure and is fully consulted.

17. ASSIGNMENT AND SUBCONTRACTING

- 17.1 The Supplier shall not be entitled to assign, transfer or subcontract any of its rights or obligations under the Contract, in whole or in part), without the prior written consent of the Purchaser, which shall not be unreasonably withheld.
- 17.2 Subcontracting by the Supplier shall not in any way relieve the Supplier of its responsibilities under the Contract.
- 17.3 The Purchaser has the right to transfer its rights and obligations under the Contract, in whole or in part, upon written notice to the Supplier. Upon the Purchaser's request, the Supplier shall enter into such instruments as are reasonably required to give effect to such transfer.

18. DISPUTE RESOLUTION

- 18.1 If any dispute arises out of or in connection with the Contract ("Dispute") the Parties undertake that they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other.
- 18.2 If the Dispute has not been resolved to the satisfaction of either Party within thirty (30) days of initiation of the procedure pursuant to Clause 18.1 or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may refer the Dispute to the Courts in accordance with Clause 29.
- 18.3 Nothing in this Clause 18 shall restrict or prevent either Party from seeking injunctive relief at any time.

19. PUBLICITY

- 19.1 Neither the Supplier nor the Purchaser shall, for publicity purposes without the prior written consent and approval of the other Party:
- make use of the other Party's name or the name of that Party's personnel, customers or agents; or
 - refer to the other Party or the Contract in any advertisement announcement or notice except to the extent required by law or any competent regulatory body.

20. NOTICES

- 20.1 A notice given under or in connection with the Contract must be in writing and (a) delivered by hand; or (b) sent by pre-paid first class post or other next working day delivery service providing proof of delivery; or (c) sent by pre-paid airmail or international courier service providing proof of delivery; or (d) sent by email. Such notice shall be sent to the address of the Purchaser or to the address of the Supplier shown on the Purchase Order or to such other address as either the Supplier or the Purchaser may substitute by written notice to the other Party (as the case may be).
- 20.2 Notice shall be deemed given:
- if delivered by hand, on the day of delivery;
 - if sent by pre-paid first class post or other next working day delivery service providing proof of delivery, at the time recorded by the delivery service;
 - if sent by pre-paid airmail or international courier service providing proof of delivery, at the time recorded by the delivery service; and
 - if sent by email, at the time of transmission during normal Australian business hours.

21. MISCELLANEOUS

- 21.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing. Failure or delay by the Purchaser in enforcing any provision of the Contract shall not be a waiver of any of the Purchaser's rights under the Contract or of the right at any time subsequently to enforce that provision or any other provision of the Contract. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 21.2 No amendment or variation to the Contract shall be binding on the Purchaser unless it is agreed by the Parties' duly authorised representatives in writing and, where required, issued as a written Purchase Order amendment by the Purchaser.
- 21.3 A person who is not a Party to the Contract shall have no right to enforce any term of the Contract.
- 21.4 If any provision of the Contract is held by any competent authority to be invalid, illegal, unenforceable or unreasonable in whole or in part, it shall, to that extent, be deemed severable and the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

22. SUPPLIER CODE OF CONDUCT

- 22.1 The Supplier shall comply, and shall procure that Supplier Personnel comply, with the Purchaser's Supplier Code of Conduct which can be viewed on the Purchaser's website at [Working with us \(qinetiq.com\)](http://Working with us (qinetiq.com)).

23. BUSINESS ETHICS, SANCTIONS AND MODERN SLAVERY

- 23.1 Each Party shall comply with any anti-corruption and anti-bribery laws, legislation, regulations or directives ("Anti-Corruption Legislation") which apply to its business or which apply in the place where the Contract is performed. Each Party will not, and will procure that Supplier Personnel will not, engage in any activity, practice or conduct which would constitute an offence under any Anti-Corruption Legislation. In addition, the Supplier shall maintain in place policies and procedures governing its business ethics which ensures it complies with the requirements of the Purchaser's Supplier Code of Conduct which can be viewed on the Purchaser's website at [Working with us \(qinetiq.com\)](http://Working with us (qinetiq.com)).
- 23.2 The Supplier shall and shall procure that any Related Body Corporate of the Supplier shall: (i) comply with any trade, financial or other sanctions regime imposed by the UN, Australia, EU, UK, US (including regimes administered by the Australian Department of Foreign Affairs and Trade, US Department of the Treasury, Office of Foreign Assets ("OFAC") and the UK Treasury) and any other such regime which applies in relation to the Supplier's business ("Sanctions"); and (ii) ensure that it shall not supply any goods or other items pursuant to the Contract from, or on behalf of, a "Restricted Person" (being any person who is listed as, or owned or controlled by any person listed

as, targeted by Sanctions (including but not limited to persons on the “Specially Designated Nationals and Blocked Persons” list issued by OFAC and the “Consolidated List of Financial Sanctions Targets in the UK” issued by OFAC and the “Consolidated List of Financial Sanctions Targets in the UK” issued by the UK Treasury, or located or incorporated in any country which is the target of country-wide Sanctions)), nor use any monies paid by the Purchaser for the benefit of a Restricted Person.

- 23.3 The Supplier shall comply with any modern slavery laws, legislation, regulations or directives (“Modern Slavery Legislation”) which apply to its business or which apply in the place where the Contract is performed. The Supplier will not and will procure that Supplier Personnel will not, engage in any activity, practice or conduct which would constitute an offence under any Modern Slavery Legislation.
- 23.4 A breach of this Clause 23 shall be deemed to be a material breach of the Contract.

24. DATA PROTECTION

- 24.1 In performing the Services and/or its obligations under the Contract, the Supplier shall comply with and ensure that Supplier Personnel comply with the Australian *Privacy Act 1988* (Cth) and/or other applicable data protection legislation (“Data Protection Legislation”), applicable to its business or which apply in the place where the Contract is performed.
- 24.2 The Supplier shall not perform its obligations under the Contract in such a way as to cause the Purchaser to breach any of its obligations under any relevant Data Protection Legislation.
- 24.3 A breach of this Clause 24 shall be deemed to be a material breach of the Contract.
- 24.4 The Supplier shall, to the extent permitted by law, at all times during and after the term of the Contract, indemnify the Purchaser and keep the Purchaser indemnified against all losses, fines, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Purchaser arising from any breach of the Supplier's obligations under this clause 24 where such breach is caused by the act or omission of the Supplier except and to the extent that such liabilities have resulted directly from the Purchaser's instructions.

25. GENDER EQUITY

- 25.1 The Supplier acknowledges that the Purchaser enters into the Contract on the basis that the Supplier is compliant under the Australian *Workplace Gender Equality Act 2012* (Cth) (“WGE Act”), where it is required to do so. If the Supplier becomes non-compliant with the WGE Act during the term of the Contract, the Supplier shall promptly notify the Purchaser and, upon request from Purchaser, shall provide evidence that it is taking the relevant steps to remedy the non-compliance in a timely manner.
- 25.2 A breach of this Clause 25 shall be deemed to be a material breach of the Contract.

26. US IMPORT AND EXPORT COMPLIANCE

- 26.1 This Clause 26 shall apply where the Supplier is a US supplier of items exported from the US, or a non-US supplier of US origin items (including as a distributor and/or a reseller).
- 26.2 The Supplier shall formally identify, using the Purchaser's Export Control Supplier Declaration Form, each item of hardware, software, technical data, technology, documentation or other article or item that is subject to US export control regulations. The Supplier shall notify the Purchaser of the export control classification for the Goods and/or Services as follows:
- if controlled by the International Traffic in Arms Regulations (ITAR), the United States Munitions List (USML) category and subcategory; or
 - if controlled by the Export Administration Regulations (EAR), the Export Control Classification Number (ECCN).
- 26.3 The Supplier shall obtain in good time all export control authorisations and licences required by US law to perform the Contract (“US Licences”). The Supplier warrants that it either holds all required US Licences on the date of the Purchase Order or will obtain such US Licences in good time to meet the delivery schedule.
- 26.4 The Supplier shall inform the Purchaser immediately of any issues related to the US Licences which may have an adverse impact on its capacity to perform the obligations under the Contract. The Purchaser will assist the Supplier in producing the documentation necessary to obtain the US Licences, including end use and end user statements.
- 26.5 If it is a non-US supplier of US origin items, the Supplier shall, at the Purchaser's request, provide the Purchaser with a point of contact in the Original Equipment Manufacturer (“OEM”)’s organisation competent to discuss export control matters with the Purchaser and to provide authoritative guidance regarding the export controls applicable to the OEM's items.
- 26.6 The Supplier agrees to use the Destination Control Statement as required by the ITAR or the EAR, and to provide the Purchaser with a copy of any export licence or authorisation that has been obtained. In the case of an ITAR licence, the Supplier may redact its ITAR registration number appearing on the licence and furnish the Purchaser with a redacted copy. The Supplier must inform the Purchaser of any conditions or provisos applicable to the licence(s).
- 26.7 The Supplier will assist the Purchaser in making application for any amendment or re-transfer or re-export request that may be required in relation to a US Licence.
- 26.8 When further subcontracting is permitted under the Contract, the Supplier will include provisions equivalent to this Clause 26 in any further subcontracts entered into in respect of the Goods and/or Services, where applicable. The Supplier shall procure that all subcontractors requiring access to the licensed article(s) shall be covered by the relevant licence(s).

27. NON-US IMPORT AND EXPORT COMPLIANCE

- 27.1 This Clause 27 shall apply where the Supplier is a non-US supplier of items exported from outside the US (and the article(s) or item(s) are not manufactured outside the US subject to a Manufacturing Licence Contract approved by the US State Department), or a supplier of non-US origin items (including as a distributor and/or a reseller).
- 27.2 The Supplier shall formally identify, using the Purchaser's Export Control Supplier Declaration Form, each item of hardware, software, technical data, technology, documentation or other item that is subject to its national export control regulations. The Supplier shall notify the Purchaser of the export control classification established by its competent national authorities in respect of any such items.

- 27.3 The Supplier shall obtain in good time all export control authorisations and/or licences required by its national law to perform the Contract ("Non-US Licences"). The Supplier warrants that it either holds all Non-US Licences on the date of this Purchase Order or will obtain such Non-US Licences in good time to meet the delivery schedule.
- 27.4 The Supplier shall inform the Purchaser immediately of any issues related to the Non-US Licences which may have an adverse impact on its capability to perform the obligations under the Contract. The Purchaser will assist the Supplier in producing the documentation necessary to obtain the Non-US Licences, including end use and end user statements.
- 27.5 The Supplier shall, at the Purchaser's request, provide the Purchaser with a point of contact in the OEM's organisation competent to discuss export control matters with the Purchaser and to provide authoritative guidance regarding the export controls applicable to the OEM's items.
- 27.6 The Supplier will assist the Purchaser in making application for any amendment or re-transfer or re-export request that may be required in relation to a Non-US Licence.
- 27.7 Where further subcontracting is permitted under the Contract, the Supplier will include provisions equivalent to this Clause 27 in any further subcontracts entered into in respect of the Goods and/or Services, where applicable. The Supplier shall procure that all subcontractors requiring access to the licensed article(s) shall be covered by the relevant licence(s) to the extent required by the export control laws applicable to the Supplier.

28. COUNTERFEIT MATERIALS

- 28.1 The Supplier shall ensure that it complies with all applicable anti-counterfeiting or anti-piracy laws, legislation, regulations or directives ("Anti-Counterfeiting Legislation") which apply to its business and shall not source or provide any Goods which are counterfeit and/or which have been sourced from unauthorised distributors which are not validly licensed. The Supplier will not, and will use reasonable endeavours to procure that Supplier Personnel will not, engage in any activity, practice or conduct which would constitute an offence under any applicable Anti-Counterfeiting Legislation.
- 28.2 A breach of this Clause 28 shall constitute a material breach of the Contract.

29. GOVERNING LAW AND JURISDICTION

- 29.1 The Contract and any dispute or claim arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the laws of the State of Victoria, Australia.
- 29.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the Victorian Courts provided that each Party shall have the right to enforce a judgment of the Victorian Courts in a jurisdiction in which the other Party is incorporated or in which any assets of the other Party may be situated.