

UNITED KINGDOM

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 the following terms have the following meanings:
“Affiliate” any persons that Control, are Controlled by or are under common Control with us from time to time;

“Change” any mechanical, software or other change in design, manufacturing process, supply chain, specifications, materials or product standards (including part substitutions or internal relocation of parts) which affects or potentially affects performance, reliability, function, safety, appearance, quality, dimensions or tolerances or any other Specifications of Deliverables.

“Claims” claims or proceedings made, brought or threatened against us by any person;
“Confidential Information” any Contract and any information that relates to a party (or any of its Affiliates) disclosed to the other party in connection with the Contract, but excluding information received by the other party that: (i) is publicly available (other than through a breach of Condition 11); (ii) was received from a third party who did not acquire it in confidence; or (iii) is developed without any breach of the Contract;

“Contract” a contract for the supply of Deliverables by you to us on these Conditions, including pursuant to a Framework Agreement, as formed under Condition 2.1;
“Control” has the meaning set out in section 1124 of the Income and Corporation Taxes Act 2010 and “Controlled” is construed accordingly;
“Deliverables” means Goods, Work Product and/or Services.
“Delivery” delivery of the Goods in accordance with Condition 4;

“Framework Agreement” a framework agreement in place between you and us for the supply of Deliverables incorporating these Conditions;
“Goods” the goods set out in the Order, any Specification or referred to in the Framework Agreement;

“IPR” all intellectual and industrial property rights of any kind including patents, trade secrets, supplementary protection certificates, rights in know-how, registered and unregistered trade marks and designs, models, rights to prevent passing off or unfair competition and copyright, database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in all countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

“IPR Claim” a claim that the possession, use and/or sale of Deliverables by us, our Affiliate or our other Customers infringes the IPR of any person;

“Liability” liability arising out of a connection with a Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise including any liability under an indemnity contained in a Contract and/or arising from a breach of, failure to perform, or delay in performing any of a party’s obligations under a Contract, however caused including if by negligence;

“Losses” all losses, liabilities, costs, demands, damages and expenses that are or will be incurred by us or our Affiliates in respect of any Claims, including IPR Claims;

“Order” our written acceptance of your quotation for the supply of Deliverables to us AND/OR any purchase order submitted by you to us for Deliverables;

“Price” (i) the lower of the price for the Deliverables set out in the Order and your price for the Deliverables in force at the time of Delivery of Goods or completion of Services; or (ii) where there is a Framework Agreement in place, the price for the Deliverables as set out in the Framework Agreement;

“Services” the services set out in the Order, any Specification or referred to in the Framework Agreement;

“Specification” the specifications and requirements for the Deliverables set out or referred to in the Order or as defined in the Framework Agreement;

“we” or “us” or “our” the person named as the customer in the Order and/or referred to as “Customer” in a Framework Agreement;

“Work Product” any reports, documents, work product or other materials created for us by you, or on your behalf, arising from the IPR of any person;

“you” the person named as the supplier in the Order and/or referred to as the “Supplier” in a Framework Agreement;

1.2 headings are for ease of reference and do not affect the interpretation of these Conditions;

1.3 references to a “person” include any individual, body corporate, partnership, government authority, agency or department, state or any other entity (in each case whether or not having separate legal personality);

1.4 any words following the words “include”, “in particular” or any similar expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

1.5 an obligation on a party to procure or make sure the performance or standing of another person does not constitute a primary obligation of that party; and

1.6 a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2. CONTRACT FORMATION

2.1 A Contract is formed when we accept any quotation issued by you (verbal or written) by issuing an Order (whether or not there is a Framework Agreement in place) OR where you perform any act consistent with fulfilling an Order submitted by us for Deliverables. We are not obliged to accept any quotation issued by you.

2.2 These Conditions are the only terms and conditions on which we will purchase Deliverables. They apply to all orders and conditions that you may seek to apply or which may otherwise be implied, including any which are endorsed on, delivered with or contained in your quotation, Order acknowledgement, on our website or other sales materials or media or on any delivery note (“Seller T&Cs”) and you waive any rights to rely on any such Seller T&Cs. Delivery of Goods and/or commencement of performance of Services is conclusive evidence of your acceptance of these Conditions.

2.3 You may not cancel a Contract. Unless you notified us in writing before we placed an Order that we will not cancel it, we may cancel a Contract in whole or part any time before delivery of the Goods or completion of performance of Services. Our sole liability will be to pay to you fair and reasonable compensation for work-in-progress at the time of cancellation provided that:

2.3.1 such compensation will not include any loss of profits OR any indirect or consequential loss; and

2.3.2 where Goods are not manufactured specifically for us to our Specification, our sole liability will be to pay you a fair and reasonable restocking charge.

3. YOUR OBLIGATIONS

3.1 The quantity, description and Specification of Deliverables will be as set out in the Order. You must not make any Change to Deliverables without our prior written consent. You will carry out any reasonable Change that we request to any Deliverables. We will negotiate, in good faith, with you an agreed adjustment to the price, delivery date or both as a result of a Change.

3.2 You will maintain detailed quality control and manufacturing records for at least ten (10) years (or such other time as set out in a Framework Agreement or Order) from the date of Delivery of Goods which we or a third party on our behalf may inspect or receive copies of on demand.

3.3 We may inspect and test Goods at any time prior to Delivery. You will allow us and our representatives to enter your premises to carry out such inspection and testing and will provide us with all facilities reasonably required. If, following such inspection or testing, we are not satisfied that the Goods will comply with Condition 5.1, you will take all steps necessary to make sure compliance.

3.4 You will maintain a quality control system that meets any international standard as required by us, or which is otherwise approved by us and such test and inspection system as we may require.

3.5 You may not deliver the Goods by separate instalments without our prior written consent. Instalments will be invoiced for separately by you.

4. DELIVERY OF GOODS / SUPPLY OF SERVICES

4.1 Unless otherwise specified in an Order, you will deliver the Goods DDP (Incoterms 2010) to the address specified in the Order during our normal business hours on the date specified in the Order. You will be responsible for off-loading the Goods from the delivery vehicle. Delivery of the Goods will occur when they have been off-loaded at the delivery address.

4.2 You will perform Services in accordance with the applicable timetable communicated to you or as set out in the Order to meet all Specifications.

4.3 Time is of the essence for performance of your obligations under the Contract. If you are late performing your obligations under the Contract, you will pay to us liquidated damages of 15% of the Price for each week of delay up to a maximum of 15% of the Price. You and we agree that this amount is reasonable and proportionate AND the most effective way of compensating us for part or all of our losses arising from late performance. However, you and we intend that we should be able to recover general damages as well as liquidated damages in circumstances where we have suffered loss in excess of the liquidated damages as a result of your late performance. Therefore, our rights to any liquidated damages under this Condition 4.3 is without prejudice to any other rights which we may have under the Contract or otherwise in respect of late performance, including the right to sue for damages or other relief and/or to terminate the Contract. A claim for general damages for late performance will be reduced by the amount of liquidated damages pursuant to Conditions 4.3 actually applied or paid in respect of such late performance.

4.4 Services will be accepted by us when we are satisfied that the Services comply with the Specifications.

4.5 You will make sure that the Goods are marked in accordance with our instructions and any applicable laws, rules and regulations and are properly packed and secured; marked with information on their origin; delivery is accompanied by a prominently displayed delivery note showing the Order number, date of Order, type and quantity of Goods, and any special storage instructions; and delivered with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and

repair of the Goods.

4.6 If you fail to deliver the Goods on time we may terminate the Contract immediately by giving you notice, in which case you will refund any monies already paid by us in relation to the Goods that have not been delivered and indemnify us and our Affiliates against our Losses as a result of your failure to supply Goods, including obtaining substitute goods from another supplier.

4.7 We will have a reasonable period of time following Delivery to inspect Goods. We may reject Goods which do not meet Specifications. We can also reject Goods which are more or less than the quantity or type Ordered or delivered prior to the date specified on the Order. Rejected Goods will be returned at your cost and expense. If we accept Goods delivered prior to the date specified on the Order we may charge you the cost of storing them until the actual specified delivery date.

4.8 Risk in the Goods passes to us on the later of acceptance and Delivery.

4.9 Ownership of the Goods passes to us on the earlier of payment of the Price and Delivery.

4.9 You will notify us within writing as soon you are aware that any Goods or the product support for the Goods are to be discontinued or made of “end of sale” or “end of life”. At our request, you and we will agree in good faith a reasonable period of time during which you will keep agreed spare parts available for us for any discontinued, despatched, end of life or end of sale Goods.

5. YOUR OBLIGATIONS

5.1 You will make sure that the Goods will:

5.1.1 be of satisfactory quality, comprise new materials (which are not used, refurbished, reconditioned, remanufactured or of such age as to impair usefulness or safety) and be fit for any purpose notified by you to us;

5.1.2 conform to, satisfy and be capable of the Specifications;

5.1.3 be free from defects in design, materials and workmanship;

5.1.4 be sold to us with full and unencumbered title and do not infringe the IPR of any third party;

5.1.5 comply with all (i) applicable laws, (ii) regulatory requirements and (iii) standards including those issued by the British Standards Institution (or local equivalent) and requirements of relevant statutory and regulatory bodies; and

5.1.6 be safe and without risk to health.

5.2 In respect of Services, you will:

5.2.1 perform Services with the best care, skill and diligence in accordance with best practice;

5.2.2 use personnel (and sufficient number of personnel) who are suitably skilled and experienced to perform the Services;

5.2.3 make sure that the Services conform with our reasonable instructions, comply with Specifications, are performed to meet the purposes notified by you to us and do not infringe the IPR of any third party;

5.2.4 provide all equipment, tools and vehicles and other items required to provide the Services;

5.2.5 obtain and at all times maintain all Licences and consents required for the provision of the Services;

5.2.6 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; and

5.2.7 not do or omit to do anything which may cause us or our Affiliates to lose any licence, authority, consent or permission required for us or our business;

5.3 You will observe all health and safety rules and regulations and any other security requirements that apply at any of our premises and ensure that your personnel are insured against all risks while working on our premises.

5.4 Without affecting any of our other rights or remedies, if you materially breach any of these Conditions OR any goods (whether or not accepted in whole or in part) do not conform with Condition 5.1 during the longer of (i) your warranty period for the Goods and (ii) 12 months following Delivery OR any Services breach Condition 5.2, then we may:

5.4.1 terminate the Contract and any other existing Contracts immediately with notice;

5.4.2 require you, at our option, to promptly repair or replace the relevant Goods or reperform the relevant Services free of charge;

5.4.3 reject the Deliverables (in whole or in part) and require you refund the Price for the relevant Deliverables;

5.4.4 accept the Deliverables subject to an equitable price reduction; or

5.4.5 at your expense, repair or have a third party repair the Goods or reperform or have a third party reperform the Services ourselves or on our behalf

and you will indemnify us and our Affiliates against our Losses (including from any IPR Claims) arising from such breach.

5.5 Condition 5.4 will apply to any repaired or replacement Goods supplied under Condition 5.4.2.

5.6 If, as a result of any Goods not conforming with Condition 5.1 or Services not conforming with Condition 5.2 or otherwise representing an unreasonable risk of harm to the public or the environment, we determine a recall, removal or correction campaign (“campaign”) is necessary or are required to carry out a campaign, we may implement such campaign and you will indemnify us and our Affiliates against all Losses incurred as a result of any such campaign.

6. OUR PROPERTY

6.1 All patterns, dies, moulds or other tooling or materials, supplied by us or prepared or obtained by you for and at our cost (“Tooling”), will be marked with our name or as otherwise specified by us and will be and remain our exclusive property returnable in good condition on demand.

6.2 You will insure against all risks any Tooling sent to you in connection with the Contract and also any of your own tooling or property which may be kept on our premises for the purposes of providing Deliverables. You will keep all Tooling safe and in good condition while in your custody and under your control. All Tooling will be kept separately from your stock and other inventory.

6.3 You shall retain the right to charge to you the cost of any Tooling if it is destroyed or damaged or rendered unfit for the purpose for which it was originally manufactured while under your control.

6.4 You will not dispose of any Tooling other than in accordance with our prior written instructions. You will not, at any time, use Tooling, nor will you allow Tooling to be used by anyone else for any purpose other than the supply of the Deliverables unless we have previously provided our consent in writing.

6.5 We will have the right to enter your premises and remove Tooling at any time without being liable for trespass or for damages of any sort.

7. ASSIGNMENT OF IPR

7.1 This Condition 7 will apply if the Goods are to be made, modified or redesigned to our Specification. Any bespoke Specification or Work Product you create or have created for us will be treated as “Goods” for the purposes of this Condition 7.

7.2 We will own all IPR in the Goods and our specification. Accordingly, you will not use our specification other than to manufacture the Goods for us. With full title guarantee, you:

7.2.1 assign to us all IPR in the Goods which subsist as at the date of the Contract;

7.2.2 assign to us (by way of present assignment of the future copyright) all future copyright in the Goods; and

7.2.3 agree to assign to us all other IPR in the Goods.

7.3 You will:

7.3.1 at your own cost, execute all such documents and do all such acts and things as we may request from time to time in order to secure our full, title and interest in the IPR in the Goods; and

7.3.2 obtain the waiver of all moral rights (and any broadly equivalent rights) in the Goods.

7.4 The exception to Condition Error Reference source not found, above is that any IPR in existing products, materials or data used to create Goods (“Existing Materials”) will continue to belong to You (or your suppliers). You grant (and, where applicable, will ensure that your suppliers grant) to us, our affiliates and our end customers a non-exclusive, perpetual, royalty-free, irrevocable licence to use and to have used Existing Materials which form part of any Goods.

8. PRICE AND PAYMENT

8.1 As long as you perform your obligations in accordance with the terms of the Contract, we will pay the Price to you in accordance with Condition 8.

8.2 The only sums of money we will pay in connection with the supply of the Deliverables are the Prices which will be inclusive of all costs and expenses incurred by you including all packaging, insurance, carriage, duties and delivery costs.

8.3 Any sum payable under the Contract is exclusive of value added tax upon any supply made to us which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time but inclusive of all other similar or equivalent taxes, fees and levies imposed from time to time by any government or other authority.

8.4 You may invoice us for the Prices for the Goods following Delivery and for Services following completion.

8.5 Other than as set out in Conditions 8.7 and 8.9, each invoice will be payable by us within 60 days following the date on which the invoice is received by us. You will send invoices to the address specified in the Order.

8.6 No payment made by us will constitute acceptance by us of any Deliverables or otherwise affect any rights or remedies which we may have against you including the right to recover any amount overpaid or wrongfully paid to you.

8.7 We may withhold payment of any disputed sum until the dispute is settled.

8.8 If any undisputed sum payable under the Contract is not paid when due you may charge us interest daily on that sum at 3% per year above the base lending rate from time to time of Bank of England from the due date until the date of payment (whether before or after judgment).

8.9 We may set-off any liability which you have to us against any liability which we have to you.

9. TERMINATION

9.1 If you commit a material breach of these Conditions we may terminate the Contract and any other existing Contracts immediately with written notice. Any breach of Conditions 11, 12 or 15.9 will be deemed to be a material breach.

9.2 We may terminate the Contract immediately by giving you written notice if you: (a) have a receiver, administrator or provisional liquidator appointed; (b) are subject to a notice of intention to appoint an administrator; (c) pass a resolution to your winding-up; (d) have a winding up order made by a court in respect of you; (e) enter into any composition or arrangement with creditors; (f)

cease to carry on business; (g) are the subject of anything similar or equivalent to that set out in (a) to (f) under any applicable laws; or (h) you are subject to any change of Control and you will notify us immediately upon the occurrence of any such event or circumstance.

9.3 Following expiry or termination of the Contract:

9.3.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and

9.3.2 all other rights and obligations will immediately stop but will not affect any of your or our rights, obligations, claims and liabilities which may exist prior to the date of expiry or termination; and

9.3.3 each party will immediately stop using the other party’s Confidential Information and will as soon as reasonably possible, if requested to do so, return to the other party all of the other party’s Confidential Information (including all copies and extracts) in its possession or control or confirm its secure destruction; and

9.3.4 each party may keep any of the other party’s Confidential Information which it has to keep to comply with any applicable law and Condition 9.3.2 will not apply to such Confidential Information. Condition 11 will continue to apply to retained Confidential Information.

9.4 If we terminate a Contract, we may require you to deliver to us any supplies, materials or drawings produced or acquired by you for the terminated part of the Contract and we will agree, in good faith, the amount of any payment for the same.

10. LIABILITY AND INSURANCE

10.1 You will indemnify us and our Affiliates against all our and their Losses arising from your breach or negligent performance of or your failure to perform or delay in performing any part of these Conditions. We may, at our discretion, control the defence of any claim in respect of which you are required to indemnify us under a Contract.

10.2 Subject to Condition 10.3, we will not have any Liability to you for any (i) loss of profit, goodwill or revenue; or (ii) any indirect, consequential or special loss.

10.3 Nothing in these Conditions or any Contract will operate to exclude or restrict one party’s Liability (if any) to the other (including for a person for whom it is vicariously liable);

10.3.1 for personal injury resulting from its negligence;

10.3.2 for its fraud or fraudulent misrepresentation;

10.3.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979 (title and quiet possession); or

10.3.4 for any matter for which it is not permitted by law to exclude or limit its liability.

10.4 The exclusions from and limitations of liability contained in these Conditions will apply after as well as before the date of expiry or termination of any Contract.

10.5 The exclusions from, and limitations of, liability set out in this Condition 10 will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.

10.6 You will have satisfactory insurance cover with a reputable insurer to cover your obligations to us, including public liability insurance cover and any potential liabilities arising from a Contract. You will provide evidence of your insurance coverage at our request.

11. CONFIDENTIALITY

11.1 Except as set out in Condition 11.2, each party will:

11.1.1 only use the other party’s Confidential Information for the purpose of performing its obligations and exercising its rights under the Contract;

11.1.2 keep the other party’s Confidential Information secret, safe and secure; and

11.1.3 not disclose the other party’s Confidential Information to any other person.

11.2 Each party may disclose the other party’s Confidential Information:

11.2.1 to the extent required by law, any court of competent jurisdiction or the rules of any government or regulatory body; and

11.2.2 to its officers, directors, employees and professional advisers and, in our case, our Affiliates, agents and sub-contractors, who need the Confidential Information in order for that party to perform its obligations and exercise its rights under the Contract. A party disclosing the other party’s Confidential Information under Condition 11.2.2 will make sure that each person to whom it discloses that Confidential Information is bound by obligations of confidentiality no less than onerous than those set out in this Condition 11.

11.3 Each party acknowledges and agrees that damages alone would not be an adequate remedy for breach of Condition 11 by that party. Accordingly, the other party will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of Condition 11 by the first party.

12. ETHICAL CONDUCT

12.1 You will conduct your business ethically and lawfully and in accordance with our Supplier Code of Business Ethics (<http://www.smiths.com/responsibility/supplier-code-of-business-ethics.aspx>) or equivalent.

12.2 You represent and warrant that you and your subcontractors and suppliers do not use or permit unacceptable labour practices, such as child or forced labour, or unsafe working conditions and comply with all applicable labour and employment laws, regulations, standards and conventions, including the Modern Slavery Act (2015), the UN’s Guiding Principles on Business & Human Rights and the International Labor Organization’s Conventions.

12.3 You hereby acknowledge that you are aware of, and agree to comply with all applicable anti-bribery and anti-corruption laws, including but not limited to the UK Bribery Act and the Foreign Corrupt Practices Act (FCPA) (and related regulation and guidance).

12.4 You represent and warrant that you only supply minerals to us and our Affiliates from sources that do not (i) contribute to conflict; and/or (ii) benefit or finance armed groups in the Democratic Republic of Congo or any adjoining country. You have adopted, and require your suppliers of minerals to adopt, conflict mineral policies and management systems.

12.5 You and any person nominated by us, to have such access to your premises, personnel, systems, books and records as we may require to verify your compliance with this Condition 12. We also reserve the right to inquire and investigate your conduct to satisfy our self of your compliance with this Condition 12 and to discontinue a business relationship with you if you or any of your officers, directors or employees is found to have breached any part of this Condition 12.

13. NOTICE

13.1 Notices and other communications provided for the purposes of a Contract will be in writing, in English and delivered by courier or by hand to the relevant party’s address as specified on the Order (or such other address which is notified to the other party in writing from time to time).

13.2 You will be deemed to have received any notice or other communication as specified.

14. EXPORT / IMPORT / ECONOMIC SANCTIONS CONTROLS

14.1 You agree to comply with all applicable export controls and import and economic sanctions laws and regulations, including those of your country of incorporation, from where the Goods will be supplied, where the Goods will be received and any other relevant jurisdiction. You will also obtain, as required, and comply with all applicable government authorizations and their provisions in supplying the Goods. Without limiting the foregoing, you will not transfer any export controlled item, data or services provided by us in relation to the Contract, to include transfer to any persons, including those persons employed by or associated with, or under contract to you or your lower-tier suppliers, without the authority of an applicable licence, exemption or exception.

14.2 You will not transfer to us, or make available to us, any information necessary to support any regulatory or government authorization requirements we have regarding the Goods.

14.3 You will indemnify us and our Affiliates for all Losses arising out of any breach by you of this Clause 14.

15. GENERAL

15.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

15.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in the Contract; and

15.1.2 nothing in Condition 15.1 will limit or exclude the liability of any person for fraud or fraudulent misrepresentation.

15.2 A party’s delay in exercising, partial exercising or failure to exercise a right or remedy the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it.

15.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

15.4 Variations to the Contract must be agreed in writing and signed by both parties.

15.5 No partnership, agency or joint venture between the parties will be created by the Contract.

15.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

15.7 Each of our Affiliates will be entitled to enforce in their own capacity the terms of any Contract under which that Affiliate receives a benefit, in each case subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999.

15.8 Save as provided in Condition 15.7, the parties do not intend that any term of a Contract will be enforceable against the Contracts (Rights of Third Parties) Act 1999 by any person.

15.9 You may not assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract or to sub-contract any of your obligations under the Contract. We may assign a Contract to our Affiliates.

16. GOVERNING LAW AND JURISDICTION

16.1 The Contract and any non-contractual obligations arising in connection with it are governed by the law of England and Wales. The courts of England and Wales have exclusive jurisdiction to determine any dispute arising in connection with the Contract.