



DENEL AERONAUTICS

A DIVISION OF DENEL (SOC) LTD

**STANDARD TERMS AND CONDITIONS**

**DENEL AERONAUTICS STANDARD TERMS AND CONDITIONS OF CONTRACT APPLICABLE TO ALL AGREEMENTS FOR THE SUPPLY OF GOODS AND / OR SERVICES**

**DOCUMENT NUMBER: DA-STD0011**

**IMPLEMENTATION DATE: 1 APRIL 2017**

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The terms and conditions contained in this document shall form part of each agreement for the supply of goods made by Denel Aeronautics, a division of Denel (SOC) Limited ("the Supplier"). These terms and conditions shall be submitted together with any proposal for the provisions of any goods.

Any amendment, modification or variations of these terms and conditions shall only be valid and binding if they have been approved in writing by the Legal Services Department of Denel Aeronautics.

**DENEL AERONAUTICS SHALL BE REFERRED TO AS THE "SUPPLIER" AND THE OTHER CONTRACTING PARTY AS THE "CLIENT" AND EITHER OR BOTH AS THE PARTY OR PARTIES RESPECTIVELY.**

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## 1. DEFINITIONS

In this agreement, unless inconsistent with or otherwise indicated by the context, the following terms shall have the meaning ascribed to them hereunder:

- 1.1 "Agreement" means the agreement for the supply of goods and/or services which comprises of these terms and conditions, its annexures and appendices negotiated and signed between the Parties, together with the Proposal which was accepted by the Client.
- 1.2 "Client" means the person procuring the goods or services in terms of this agreement.
- 1.3 "Commencement Date" of the Agreement shall be the date indicated in the Proposal, or in the absence of such a Commencement Date being stated, on the date on which the Proposal is accepted as evidenced by the Date of Signature;
- 1.4 "Contract Price" means the total contract price broken down per Deliverable as set out in the Delivery and Payment Schedule and/or as contained in the Proposal;
- 1.5 "Contract Term" means the duration of the agreement, commencing on the Commencement Date specified in the Proposal, and terminating on the date on which the last of the Deliverables are delivered to the Client or on a fixed date as may be recorded in the Proposal;
- 1.6 "CFE" means customer or Client furnished equipment and/or tooling and/or, material to be incorporated into the Deliverable(s) by the Supplier and shall also include all data and/or information reasonably required by the Supplier as set out in the Proposal;
- 1.7 "Data" means all information in whatever form and contained in and on various media such as paper, magnetic or electronic media or otherwise, identified either as Deliverables in the Agreement or as data required from the Client to execute the Agreement;
- 1.8 "Date of Signature" means the date on which the Proposal is accepted by the Client in writing unless otherwise specified in writing;
- 1.9 "Days" means any day of the week, excluding a Saturday or a Sunday or an official public holiday in the Republic of South Africa;
- 1.10 "Delivery and Payment Schedule" shall mean the schedule for delivery and payment of the Deliverable(s) or the performance of Services in terms of the Agreement, set out in the Proposal;
- 1.11 "Deliverable(s)" means, inter alia, components, systems, sub-systems, parts, hardware, software, documentation, data, Services and spares delivered by the Supplier to the Client in terms of the Agreement and as further described in the Proposal, read together with the Delivery and Payment Schedule contained therein;
- 1.12 "Delivery Basis" determines the Client's obligations and, unless otherwise provided for in these standard terms and conditions, the passing of risk and ownership are as set out in the Proposal and are subject to Incoterms (2000 Edition) as published by the International Chamber of Commerce;
- 1.13 "Proposal" means the document submitted to Client which contains all the variable terms of this agreement, together with any annexures thereto, and to which these standard terms and conditions are attached and which shall form the basis of the contractual relationship between the parties;
- 1.14 "Price basis" determines which cost elements are included in the price, and/or which are as set out in the Proposal;
- 1.15 "Services" means training, technical support, logistic support and any other services identified as a Deliverable in terms of the Proposal;
- 1.16 "Specification(s) / Scope of Work (SOW)" means the written specification and/or scope of work, in a configured document or stipulated within the body of this Proposal, describing the technical requirements for the Deliverables;

- 1.17 "Sub-Contractor" means any person to whom the Supplier has contracted to supply any part of the Deliverables in terms of the Agreement;
- 1.18 "Supplier" means Denel (SOC) Limited (Registration number 1992/001337/07), a company registered and existing in terms of the laws of the Republic of South Africa, and transacting through its Denel Aeronautics Division;
- 1.19 Any reference to the singular shall include the plural and vice versa;
- 1.20 A reference to any gender shall include the other genders;
- 1.21 Any reference to natural persons shall include legal persons and vice versa;
- 1.22 The headings of clauses in this Agreement are for reference purposes only and shall not be taken into account in construing the contents thereof;
- 1.23 If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of this Agreement.

## **2. PRICE**

- 2.1 The price payable for the Deliverables shall be as stipulated in the Proposal.
- 2.2 In the absence of any provision to the contrary in the Proposal, in the event of:
  - 2.2.1 The Contract Term being equal or less than 1 (one) year, then the price quoted shall be fixed, in the relevant currency, on an Ex-works Denel Aeronautics basis (Incoterms 2000); or
  - 2.2.2 The Contract Term being longer than 1 (one) year, then the price quoted shall fluctuate in accordance with the escalation provisions contained in the Proposal.
- 2.3 Subject to any term contained in the Proposal, all costing shall be reflected exclusive of VAT and in South African Rands.
- 2.4 The Supplier shall be entitled to charge interest at the prime rate charged by its bankers plus two percentage points on any overdue or outstanding payments that may be due and payable to it under this Agreement, calculated with effect from the period commencing on the due date of such payment to the date of actual payment, both days inclusive.

## **3. PAYMENT CONDITIONS**

- 3.1 Subject to the provisions of the Proposal, all payments to the Supplier, shall either be secured by an advance payment and/or a cash security deposit into the Supplier's designated bank account or by an irrevocable confirmed letter of credit or bank guarantee issued by a financial institution acceptable to the Supplier, or any other form of payment or guarantee acceptable by the Supplier payable against delivery in terms of the Delivery and Payment Schedule.

## **4. DELIVERY**

- 4.1 Subject to the provisions of the Proposal, all deliveries shall be Ex-Works Denel Aeronautics.
- 4.2 The delivery of the Deliverables shall be completed in terms of the Delivery and Payment Schedule.
- 4.3 Changes in the Delivery and Payment Schedule of the Deliverables may only be changed by agreement of the parties in writing, and unless agreed otherwise in writing by the parties, any additional cost incurred will be for the account of the Client.

**5. TITLE AND RISK**

- 5.1 The title to the Deliverable(s) shall pass to the Client on receipt by the Supplier of the final payment for such Deliverable.
- 5.2 The Supplier shall bear the risk of any loss of or damage to the Deliverable until it is delivered in accordance with the provisions applicable to the Agreement and/or as specified in the Proposal.

**6. MARKING AND PACKAGING**

- 6.1 The Supplier shall pack the Deliverables in accordance with best commercial practice applicable, in containers provided by the Suppliers which are suitable for protection of the items during shipment to and storage in the Client's country.
- 6.2 Each line item/Deliverable shall be labelled with the Supplier's standard identification tag, bearing the following information:
- The Client's name
  - Part/serial number
  - Supplier's work order number
- 6.3 Packaging for long term storage is not to be tampered with as this will result in any warranties for the product becoming void.

**7. INSPECTION AND ACCEPTANCE**

- 7.1 All Deliverables under the Agreement will be manufactured new in accordance with the Specifications and shall, where applicable, be inspected by the Supplier's Quality Delegate or other competent department of the Supplier tasked with such inspection.
- 7.2 The inspection process shall be in accordance with the Supplier's usual inspection process applicable to the Deliverables, alternatively, an agreed procedure, as stipulated in the Quality Plan which may be signed by the parties.
- 7.3 A representative of the Client, at the Client's cost, may witness the inspection process.
- 7.4 The Supplier shall give notice 14 (fourteen) days in advance in writing to the Client that the Deliverables are ready for final inspection and acceptance.
- 7.5 After satisfactory completion of the tests and/or inspections, a Certificate of Conformance will be issued and signed by the Supplier's Quality Delegate.

**8. QUALITY ASSURANCE**

- 8.1 The Supplier's Quality Management System shall be in accordance with the requirements specified in ISO 9001 and/or AS-9100, as may be applicable.
- 8.2 The Supplier shall ensure that all Deliverables supplied and Services rendered shall be in terms of the agreed quality assurance requirements as provided for in the Proposal.

**9. WARRANTY**

- 9.1 Specific warranties in respect of the Deliverables are as recorded in the Proposal, if applicable.
- 9.2 The Supplier warrants that all Deliverables, but excluding Services, furnished hereunder will conform to the requirements of the Agreement (including all descriptions, Specifications and drawings that make up part of the Agreement) and such Deliverables will be free from defects in material and workmanship, and, to the extent not manufactured pursuant to detailed design furnished by the Client, free from defects in design.

- 9.3 In the event of non-compliance of any Deliverables, which shall exclude Services, which are demonstrated to the Supplier's satisfaction to have been defective at delivery to the Client due to the Supplier's faulty workmanship, with any of the warranties set forth herein or in the Proposal, which non-compliance is discovered within the applicable item periods hereinafter described, the Supplier shall, at its option, free of charge and at its own cost and expense, repair or replace said Deliverables at its premises within 30 (thirty) days (or in respect of a defect in design, within a reasonably prompt period) of the Supplier's receipt of notice of the non-complying services. This warranty will apply to any non-compliance discovered within 6 (six) months of acceptance by the Client.
- 9.4 Each corrected, repaired or replaced deliverable, which shall exclude Services, shall be warranted only for the remainder of the original warranty period.
- 9.5 Under the term of warranty, special investigations with respect to accidents or incidents shall be excluded.
- 9.6 All costs incurred by the Supplier, except for transportation and insurance, pertaining to the implementation of this Warranty shall be borne by the Supplier.
- 9.7 This warranty is exclusive to the Client and unless previously agreed to in writing by the Supplier, shall not be honoured if sought to be enforced by any third party.
- 9.8 The Warranty extended to the Client applies in respect of product defects and failure only, and the Supplier in no way accepts liability for indirect or consequential damages suffered by the Client, whether in the form of damage to other equipment components, infrastructure loss of business, loss of profit or otherwise.
- 9.9 Notwithstanding the provisions of this clause 9, no liability shall attach to the Supplier in respect of any defect in the Deliverable, which shall exclude Services, arising out of:
- 9.9.1 Fair wear and tear ;
- 9.9.2 Mechanical damage due to incorrect or inappropriate use of the aircraft and components or failure to follow proper maintenance procedures;
- 9.9.3 Work performed on the aircraft and components by any third party after delivery of the Deliverables;
- 9.9.4 If the Deliverables were not stored, handled and/or maintained as prescribed by the Supplier.
- 9.9.5 If the Deliverables were tampered with, repaired, altered or modified in any way.
- 9.9.6 Use of the Deliverables during war (whether declared or not) or civil conflict.

## **10. CUSTOMER FURNISHED EQUIPMENT (CFE)**

- 10.1 The Client shall be responsible for the timeous supply of all CFE as stipulated in the Proposal and by the respective dates to the Supplier at the Suppliers' premises on a DDP (Incoterms 2000) basis, in order for the Supplier to carry out its responsibilities as defined in the Agreement.
- 10.2 It is hereby agreed that any delays in the provision of the CFE may result in delivery delays, and any deviation in the delivery of the Deliverables as a result thereof shall not constitute a breach of the agreement on the part of the Supplier and the Supplier shall therefore not be liable to the Client for any penalty or damage being suffered by the Client as a result.
- 10.3 The Supplier shall not alter the design of any CFE items without the written authority of the Client. In the case that the Supplier has any doubt about the design suitability of any CFE item, or has proposals for design changes, the Supplier shall advise the Client accordingly at the earliest opportunity. The Supplier shall ensure that the design of the installation using CFE is in accordance with the specific requirements of such equipment. Should the CFE be defective in any way, it shall be the obligation of the Client to provide a rectified CFE to the Supplier at the Client's cost, and any delay in the provision of the product as a consequence thereof shall not be a breach of contract on the part of the Supplier and shall not, inter alia, render the Supplier liable for any penalty or the payment of any damages.
- 10.4 Where the Client insists on a particular CFE being utilised, without modification, or should the CFE be unsuitable for the purpose intended, then subject to the Client being made aware of the

unsuitability of the CFE as contemplated in 10.3 above, the Supplier shall bear no liability arising out of the degradation or other lack of performance of the System supplied and any warranties attaching to the System are consequently voided to the extent that the System delivered is affected by such unsuitable CFE.

- 10.5 The Supplier shall not be liable for any CFE that is defective, or which modified without the prior written authority and approval of the Supplier and to the extent that this impacts on the functionality or utility of the System delivered, any warranties attaching to the affected elements of the System delivered are hereby voided.

## **11. DOCUMENTATION**

- 11.1 The Client will timeously provide all necessary drawings, specifications and manufacturing process and procedures required for the Supplier's preparation of quotation proposals and all other documentation as defined in the SOW and/or Specification, needed for ordered work under the Agreement.
- 11.2 The Client shall revise and keep all technical documentation updated, in accordance with the configuration status of the Deliverable(s) and hereby guarantees that all documents supplied (including documentation supplied up to date of this proposal) shall be the last configured status of the Deliverables.
- 11.3 The Supplier agrees that title to such supplied documents shall remain with the Client, and that such documents shall only be used for performance of the work under the Agreement. Upon completion of production of the agreed number of shipsets of Deliverables, the Client may take possession, at its own cost of all such documents by giving written notice to the Supplier to the effect.
- 11.4 Documents furnished by the Client will be listed, or incorporated by reference in the Agreement and subsequent orders placed.
- 11.5 A complete listing of all data requirements will be recorded and updated in annexures to the Proposal.
- 11.6 All documents furnished by the Client to the Supplier will be supplied in a certified configured format, referenced to a master record index, in metric format, and in the case of hard copies shall be clear and legible for copying purposes.

## **12. INTELLECTUAL PROPERTY OWNERSHIP**

- 12.1 Unless specifically agreed upon and detailed in writing by the Supplier, all intellectual property rights, without limitation, to any design, patent, copyright, business methodologies, technological or other innovation, confidential information, goodwill and any other form of intellectual property, whether registerable or not, created within the scope and execution of the Proposal and the resulting Agreement, will remain the sole property of the Supplier.
- 12.2 The Client warrants that any CFE or documentation provided by the Client to the Supplier in order to enable the Supplier to provide Product shall not infringe on the intellectual property rights of any third party and the Client hereby indemnifies the Supplier against any claim or damages which may arise as a consequence thereof.

## **13. CHANGES TO THE SCOPE OF WORK (VARIATION ORDERS)**

- 13.1 The Client may make changes to the statements of work (SOW) agreed within the Agreement, which affect the services and/or Delivery and Payment Schedule. If any such change causes an increase in the cost of, or the time required for the performance of the services or the delivering of the Deliverables, such costs shall be for the Client's account, and appropriate adjustments will be made in the delivery schedule to cater for such variation. Any change to the SOW and any resultant change in the price or delivery or both shall be in the form of a Variation Order fully supported by factual information, and the parties shall indicate their acceptance of the change to the SOW and the consequences thereof by signing the Variation Order. No amendment to the SOW shall be valid without the Variation Order being signed by both parties.

- 13.2 The Supplier may at any time suggest changes to the SOW by submitting to the Client a Variation Order. The said Variation Order will specify the price of the proposed change, the terms of payment, and the effect of the change on the delivery schedule and on other pertinent provisions set forth in the Agreement. Should the Client wish the Supplier to perform the suggested changes, the Client will sign such a Variation Order and submit it to the Supplier. Any changes to the SOW shall only become valid subject to a valid Variation Order being signed by both parties.
- 13.3 Any expenses or changes to the Contract Price, occasioned by the Variation Order, shall be for the account of the Client unless otherwise agreed by the parties in writing.

#### **14. DEFAULT / BREACH**

- 14.1 In the event of:
- 14.1.1 the Client failing to comply with any provision of this agreement and persisting in such failure for a period of 5 (Five) days after receipt of a written notice demanding compliance; or
- 14.1.2 the Client not paying any amount which is due and payable in terms hereof and persisting in such non-payment for a period of 5 (Five) days after receipt of a written notice demanding such payment; or
- 14.1.3 the Client being sequestered, whether provisionally or finally or whether as a consequence of the surrendering of his estate; or
- 14.1.4 the Client allowing the attachment of any of his assets; or
- 14.1.5 judgment being awarded against the Client and the Client failing to comply therewith within 7 (Seven) days after the date of such judgment; or
- 14.1.6 the Client entering into a compromise with his creditors, or
- 14.1.7 It becomes unlawful for a Party to perform its obligations under the Agreement or the Agreement becomes wholly or partially invalid or unenforceable except that this provision shall only extend to partial invalidity and unenforceability where, in one Party's reasonable opinion, such partial invalidity or unenforceability could seriously adversely affect the interests or rights of either Party hereunder or either Party's ability to perform its obligations hereunder.

the Supplier shall be entitled, without prejudice to any other right it may have in terms of this agreement or in law for a claim for damages or otherwise, to:

- (a) cancel this agreement and retain all amounts paid to it under this agreement, together with interest thereon, as a genuine pre-estimate of its damages, and institute a claim for damages to the extent that it may be applicable; and/ or
- (b) claim specific performance of any or all of the terms and conditions of this agreement.
- 14.2 At the election of the Supplier, where the Client has failed to make proper payment of any amounts that are due to it in terms of this agreement, the Supplier may proceed directly to institute legal proceedings for the recovery of such amounts without first referring the matter for resolution as contemplated in clause 16 hereof.

#### **15. FORCE MAJEURE**

- 15.1 Neither Party shall be held responsible in any way for any delay or failure in the performance of its obligations under the Agreement (and neither Party shall have the right to claim damages due to any such delay or failure), arising from acts of God or force majeure, such as:

war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage; sanctions, natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning; explosions, fires, destruction of machines, or factories, and of any kind of installations; boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises, and work stoppages; acts of authority, whether lawful or unlawful, power or other essential service disruptions, or any other act whatsoever, whether



similar or dissimilar to those referred to in this clause which are beyond the reasonable control of the Party affected, delays caused by suppliers, subcontractors, and transporters (provided that with respect to delays by suppliers, subcontractors and transporters, said suppliers, subcontractors and transporters shall have also have had an excusable delay within the meaning of these Clauses and have provided substantiation therefor to the affected Party) which could not have been reasonably foreseen but with respect to which the Party affected has taken reasonable steps to avoid or minimise the delay, or arising from any other causes of a similar nature beyond the reasonable control of the Party affected.

15.2 Upon the occurrence of any of the foregoing circumstances, all relevant schedules and time period for the performance by the affected Party of its obligations under the Agreement shall be extended for a period equal to the duration of the said occurrence; and an additional period reasonably required to remedy the effects of the said occurrence, it being understood, however, that the Party affected shall make reasonable efforts to remove or minimise the effects of such occurrence and to regain the time lost.

15.3 The Party affected shall, within 14 (fourteen) days of becoming aware of same bring to the knowledge of the other Party's representative/s, in writing, the occurrence of any event which the Party affected considers to be within the scope of clause 15.1 above, and as soon as possible thereafter, the approximate extension which the said occurrence is likely to cause and, thereafter, as soon as known, the exact extension which has in fact resulted.

Should the Party affected fail to inform the other Party of the occurrence of the force majeure, then the delay shall only be excusable from the date of notification and then only for the balance of such extension.

15.4 As used in this Clause, the term "Party affected" shall mean a Party whose performance of its obligations, under the Agreement has been prevented or delayed as a result of causes referred to in clause 15.1 above.

15.5 In the event of the delay enduring for a period of 6 (six) months from the aforesaid notice either Party shall be entitled, at its option, to declare the Agreement to be terminated by written notice to the other Party whereupon full restitution of part performance between the parties shall be affected.

## **16. DISPUTE RESOLUTION**

16.1 Should any dispute arise between the Client and the Supplier in connection with the Agreement, the Parties shall attempt to resolve such dispute in good faith by direct negotiations and conciliation.

16.2 Should the Parties fail to resolve the dispute in the manner specified in clause 16.1 above, the dispute shall be finally settled by a committee of 3 (three) arbitrators, who shall be appointed as follows:

- one by the Client
- one by the Supplier
- a chairman appointed by the above arbitrators.

16.3 Arbitration shall be held in accordance with the Rules for Conciliation and Arbitration of the International Chamber of Commerce, in the English language according to South African Laws and procedures in South Africa, in accordance with the provisions of the Agreement, and the decision of the arbitrators shall be final and binding on the Parties hereto.

16.4 The provisions of this clause shall serve as an irrevocable consent by both Parties to any of the proceedings in terms hereof and the Parties shall not be entitled to withdraw from the proceedings or maintain that they are not bound by such provisions. The provisions of this clause are divisible from the rest of the Agreement and shall remain in full force and effect notwithstanding termination of the Agreement for any reason whatsoever.

16.5 The parties explicitly agree that the existence of a disagreement/dispute shall not afford them the right to terminate or reduce the extent of any of their obligations in respect of the Agreement, which are not materially affected by the disagreement/dispute.

16.6 In the event of a dispute/disagreement, any interim decision given by the Supplier in respect of the matter under dispute shall prevail pending the outcome of the arbitration proceedings. The Supplier shall not delay or suspend the rendering of any service under dispute pending the result of

such proceedings, nor shall the Client withhold any payments in respect of such service under dispute.

- 16.7 The arbitration proceedings shall be held in Johannesburg, South Africa.
- 16.8 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

#### **17. INDEMNITY AGAINST LIABILITY**

- 17.1 Each Party indemnifies the other Party, its officers, servants, employees or agent against all costs and liability arising out of the presence of the first parties representatives upon or about the premises of the other Party and against all liability for their injury or death whilst carrying out their duties for the purpose of the Agreement and for all loss or damage to their personal effects.
- 17.2 Notwithstanding the generality of the foregoing the Client shall not hold the Supplier responsible for any loss or damage to property or for any injury or death to third parties, indirect and/or consequential damages, or loss of profit in the course of the Supplier performing its obligations in terms of the Agreement or thereafter.

#### **18. IMPORT AND EXPORT LICENCES/APPROVALS**

- 18.1 The Client shall for the duration of the Agreement be responsible for applying for any necessary export/import licences or approvals from any government as may be applicable.
- 18.2 Where the Deliverables are to be exported outside of the Republic of South Africa, the Client undertakes not to amend, add to, delete or otherwise alter any documentation provided by the Supplier in complying with any law, regulation or custom to facilitate the export of the Deliverables.

#### **19. TAXES AND DUTIES**

- 19.1 Each party shall be liable for the payment of any taxes, duties and costs arising out of this agreement which might be necessarily incurred by such a party pursuant to it performing its obligations or acquiring the Product under this Agreement.
- 19.2 To the extent that the Supplier is required by any law to impose any statutory charge as a result of any service or supply made under this agreement, or to deduct and/or withhold any tax, levy or similar charge on behalf of the Client and pay such amount to any competent authority, the Client hereby authorises the Supplier to do so and undertakes to reimburse to the Supplier for any funds dispensed by the Supplier on the Client's behalf as a result thereof.
- 19.3 The Client shall fully co-operate with the Supplier at all times, and in particular shall provide to the Supplier all reasonable information required by the Supplier upon request. Any such information provided by the Client which may relate to the calculation of any tax, charge, duty, fine or other statutory penalty applicable, may be divulged to any duly authorised authority for such a purpose.
- 19.4 Where the supply of goods or services necessitates components or expertise to be imported into the Republic of South Africa, and to the extent that import duty, VAT or any other statutory charge is levied on such an import, the Client shall be liable for such charges unless otherwise agreed by the parties in writing.

#### **20. TERMINATION FOR CONVENIENCE**

- 20.1 The Client shall be entitled to terminate the Agreement in whole or in part by way of giving 60 (sixty) days written notice to that effect to the Supplier.
- 20.2 Upon receipt of such notice, the Supplier shall:

- (a) Stop all work under the Agreement to the extent specified in the notice of termination by the end of the notice period.
- (b) Place no further orders for materials, services or facilities affected by the notice.
- (c) Terminate all orders and subcontractors to the required extent of the notice.
- (d) Continue work not terminated.
- (e) Protect and preserve the Client's property relating to the Agreement and deliver these to the Client as instructed.
- (f) Submit to the Client any invoices outstanding in respect of work which has already been completed according to the agreed milestone schedule.
- (g) Within one month of receipt of the notice, prepare a detailed substantiated, itemised invoice to the Client for direct expenses (man-hours and materials) already incurred or committed up to the notice date in order to achieve the outputs in respect of the work being terminated, and not already invoiced.
- (h) Within one month of receipt of the notice, prepare a detailed substantiated, itemised close-down proposal to the Client for direct expenses (man-hours and materials) that will be incurred or committed during the notice period in order to achieve the outputs in respect of the work being terminated, and not already invoiced.

20.3 If the Client exercises its right to terminate the Agreement under Clause 20, the Client undertakes to make good all costs which the Supplier has already incurred under the Agreement and been committed to in respect of cancellation costs up to the date of termination and in respect of which no recovery has been made by way of deliveries, which costs the Supplier can substantiate to the Client and which cannot reasonably be recovered in any other way and within a reasonable time period.

20.4 The Supplier shall be entitled to terminate the Agreement in whole or in part by way of giving 60 (sixty) days written notice to that effect to the Client. The Client shall have no claim against the Supplier arising out of the termination of the Agreement.

## 21. NOTICES AND DOMICILE

21.1 The Parties select the addresses stated herein as their respective *domicilia citandi et executandi*.

21.2 Any notice required in terms of this Agreement shall be in writing and posted by registered mail or by fax modem or delivered by hand to the following addresses:

21.2.1 where such notice is sent to The Client – as per Proposal

21.2.2 where such notice is sent to Denel Aeronautics:

Postal Address: P.O. Box 7246  
Bonaero Park  
1622  
Republic of South Africa  
For attention: the Project Manager as listed in the Proposal

Consignment address:  
Astro Park  
Atlas Road  
Bonaero Park  
Kempton Park  
Republic of South Africa

21.3 Any notice sent by registered post shall be deemed to have been received 21 (twenty one) calendar days after the date on which it was posted.

## 22. APPLICABLE LAW AND CONSTRUCTION

22.1 The South African law shall govern the construction, validity and performance of the Agreement in all respects.

22.2 In particular, the parties agree that due to the nature of the supply made under this agreement, and to the extent as may be applicable, such supply is subject to international and domestic laws dealing with the types of products being supplied, including without limitation:

- 22.2.1 The National Conventional Arms Control Act (Act 41 of 2001);
- 22.2.2 The Regulation of Foreign Military Assistance Act (Act 15 of 1998);
- 22.2.3 Anti-Personnel Mines Prohibition Act (Act 36 of 2003);
- 22.2.4 Firearms Control Act (Act 60 of 2000);
- 22.2.5 Non-Proliferation of Weapons of Mass Destruction Act (Act 87 of 1993);

### **23. ASSIGNMENT**

Neither Party shall assign, transfer, charge or otherwise dispose of or purport to assign, transfer, charge or otherwise dispose of the Agreement or its rights hereunder or any part hereof without obtaining the prior written consent of the other Party.

### **24. WAIVER**

The failure of either Party to enforce at any time the provisions hereof or to exercise any option provided herein, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be either a present or future waiver of such provisions, nor in any way to affect the validity of the Agreement or any part thereof or the right of the other Party thereafter to enforce each and every such provision. The express waiver (whether one or more times) by either Party of any provision, condition or requirement of the Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

### **25. LANGUAGE**

This Agreement is written in the English language and all correspondence, data and information exchanged between the Parties and all meetings held between the Parties with regard to or arising under the Agreement shall be in English.

### **26. CONFIDENTIALITY**

- 26.1 "Confidential Information" for purposes of this clause shall mean any information, know-how, reports and documents, technical as well as economical and financial information relating to any of the parties' businesses, including without limitation, all tariff books, instructions books, guidelines, application forms, policies, software programs and manuals and financial information, which may come to the attention of a party pursuant to the terms and conditions of this Agreement.
- 26.2 The parties hereby acknowledge that –
  - 26.2.1 in the course of their involvement, Confidential Information belonging to a party ("the Protected Party") will be disclosed to and come to the attention of the other party ("the Obligated Party");
  - 26.2.2 in the event of the unauthorised disclosure of the Confidential Information, the Protected Party may suffer irreparable financial and other harm;
  - 26.2.3 the obligations contained in clause 26.2.1 shall not apply to Confidential Information which –
    - 26.2.4 at the time of its disclosure is part of the public domain or which subsequently becomes, through no fault or failure of the Obligated Party, part of the public domain;
    - 26.2.5 at the time of disclosure can be shown by the Obligated Party to the Protected Party, to have been in its possession prior to disclosure thereof by the Protected Party or to have come into its possession thereafter by disclosure of a third party.

- 26.3 The Obligated Party undertakes not to disclose, in whole or in part, any Confidential Information to any third party without the prior written approval of the Protected Party.
- 26.4 The Obligated Party's confidentiality obligations hereunder shall remain in force for an indeterminate period after the Date of Signature hereof.
- 26.5 The Obligated Party agrees that the sole purpose of the Confidential Information being disclosed or made accessible to it, is in connection with the performance of its duties in terms of this Agreement.
- 26.6 The Obligated Party undertakes not to use the Confidential Information for any other purpose or in any manner that is adverse or detrimental to the interest of the Protected Party.
- 26.7 The Obligated Party shall disclose the Confidential Information only to such employees, officials, agents or Representatives who require the information for the exercising of their duties with the Obligated Party, and only subject to confidentiality undertakings substantially in the form of this clause.
- 26.8 In the event that this Agreement with the Protected Party is terminated or in any manner brought to an end, the Obligated Party shall return to the Protected Party all documents and other writing supplied by it to the Obligated Party and which constitute Confidential Information and the Obligated Party shall not retain any copies, extracts or other reproductions in whole or in part of such documents or other writings or any data contained in computers or stored on computer readable media of any kind prepared by the Protected Party or its employees, containing or based upon the Confidential Information.
- 26.9 The Protected Party shall be entitled, forthwith, without prior written notice to the Obligated Party and without prejudice to any rights which it may be entitled, to –
- 26.9.1 obtain an interdict in any competent court to prohibit the Obligated Party to continue with the contravention of its undertakings in terms hereof;
- 26.9.2 obtain a court order in any competent court for the delivery of any documents, writings, copies, extracts or reproductions referred to in clause 26.8 above.
- 26.10 No news releases, public announcements or publicity shall be released by the either Party concerning the Agreement without the prior written approval of the other Party.

## **27. RELATIONSHIP OF THE PARTIES**

- 27.1 Both parties shall at all times show the utmost good faith towards each other for the duration of this agreement.
- 27.2 Notwithstanding the aforesaid, the parties shall at all times be independent contracting parties and neither shall be –
- 27.2.1 the partner of the other;
- 27.2.2 the agent or representative of the other, unless specifically so provided in this agreement or in writing;
- 27.2.3 the employee of the other;
- 27.3 Accordingly neither party shall have the authority to bind the other party by any representations, statements or agreements in any manner whatsoever.

## **28. AMENDMENTS**

No modification, addition or deletion of the terms and conditions of the Agreement shall be binding upon the Parties thereto unless set forth in a written amendment executed by authorised representatives of the Parties.

**29. ENTIRE AGREEMENT**

The terms and conditions of the Agreement as set out in the Proposal and these terms and conditions, as well as any Annexures referenced therein and attached thereto, constitute the entire agreement between the parties hereto and shall supersede all previous communications, representations or agreements, whether oral or written, between said parties with respect to the subject matter hereof.

**30. CONFLICT**

Should there be any conflict in the provisions contained in the Proposal or these general terms and conditions, then the order of preference shall be:

30.1 Proposal; then

30.2 These terms and conditions.

**31. SEVERABILITY**

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which Agreement will continue to be valid and enforceable.

**32. NO PREJUDICE**

The common law rule of construction that a contract is interpreted against the party drafting the contract will not apply to this agreement.

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