



# DENEL SOC LTD

## DIRECTIVE

NUMBER

7

**SUBJECT: GROUP PROCUREMENT TERMS AND CONDITIONS**

**EFFECTIVE DATE**

**1 MARCH 2015**

1. PREAMBLE
2. PURPOSE
3. SCOPE
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## DENEL SOC LTD COMPANY POLICY

### 1. PREAMBLE

This Group Procurement Terms and Conditions are intended to facilitate and shorten the contracting process between Denel Divisions and their potential Suppliers or Service Providers. Given the nature of the different requirements, products and services, divisions are expected to implement the attached Standard Terms and Conditions insofar as purchasing / procurement contracts are concerned. That means that divisions can only exclude or delete clauses that are irrelevant based on the nature of the product or service being procured. In instances where an additional requirement would enhance the quality of the contract, the relevant division may request a deviation by submitting the request to the Group Supply Chain Executive.

### 2. PURPOSE

The purpose of this Group Standard Terms and Conditions is to:

- Entrench uniformity, standardisation and compliance in the way Denel divisions contract Suppliers or Service Providers.
- Minimise risks to Denel by ensuring that the company's interest take precedence over those of the other contracting party.
- Eliminate, as far as possible, any ambiguities in the contracts that may lead to unnecessary litigation and risk to the business of Denel.
- Ensure that certain actions and measures are monitored and acted upon timeously to safeguard the interests of Denel.
- Provide guidance on the most appropriate corrective measures or sanctions when Suppliers or Service Providers fail to meet their contractual obligations.
- Simplify and shorten the contracting process.

### 3. SCOPE

The scope of the Group Terms and Conditions covers all areas that regulate the relationship between Denel on one hand, and the potential or existing Supplier of products and / or services. The Group Terms and Conditions also specify steps or measures that are necessary to take to ensure that the interests of Denel are protected at all times.

### 4. APPLICABLE REFERENCES

- 4.1 The Constitution of RSA - Sect. 217
- 4.2 The Public Finance Management Act, No. 1 of 1999, as amended
- 4.3 The Preferential Procurement Policy Framework Act No. 5 of 2000 and relevant Regulations



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- 4.4 Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended
- 4.5 Delegation of Authority - Policy 2
- 4.6 Enterprise and Supplier Development Policy – Policy 40

### 5. **DEFINITIONS AND ABBREVIATIONS**

Definitions and abbreviations are listed in the attached Group Terms and Conditions.

### 6. **APPENDICES**

The Standard Denel Group Terms and Conditions as attached serve as the heart of this document and are the ones that must be attached to any contractual document or procurement transaction to safeguard the interests of the company.



**DENEL SOC LTD  
COMPANY POLICY**

**Annexure A**



**DENEL SOC LTD  
STANDARD TERMS AND CONDITIONS OF PROCUREMENT**



## DENEL SOC LTD COMPANY POLICY

### 1. INTRODUCTION

This document deals with the Standard Terms and Conditions of Procurement that shall apply in the event of an agreement between Denel and a Supplier for the purchase of Goods and/or Services by Denel.

### 2. SCOPE AND APPLICATION

- 2.1 These Standard Terms and Conditions of Procurement shall apply to all Purchase Orders placed by Denel.
- 2.2 The latest issue of the Denel Standard Terms and Conditions of Procurement (this document) shall supersede any other conditions of purchase. In the event that there is conflict, the specific conditions stipulated in the Purchase Order shall take precedence over any such conflicting provisions of the Standard Terms and Conditions of Procurement.
- 2.3 If any individual term/s of these Standard Terms and Conditions of Procurement cannot be applied for any reason whatsoever, all other terms and conditions will remain unaffected.

### 3. DEFINITIONS AND INTERPRETATION

- 3.1 In these Standard Terms and Conditions of Procurement, unless inconsistent with or otherwise indicated by the context, the following terms shall have the meaning ascribed to them hereunder:

- |       |                                    |   |
|-------|------------------------------------|---|
| 3.1.1 | “Advance Payment”                  | Means an upfront payment that may be made by Denel to the Supplier.   |
| 3.1.2 | “AS-9100”                          | means the quality management system specific to the Aviation, Space and Defence industries issued by the Americas Aerospace Quality Standards Group (Aaqs) Committee G-14 of the Society of Automotive Engineers (“SAE”). |
| 3.1.3 | “Background Intellectual Property” | means unique Intellectual Property information owned by one of the Parties before the execution of this Agreement and/or developed independently by a Party before the execution of this Agreement.                       |
| 3.1.4 | “BBBEE”                            | means Broad Based Black Economic Empowerment as provided for in section 1 of the Broad Based Black Economic Empowerment Act, 53 of 2003.  |
| 3.1.5 | “Business Day”                     | means each day of the week excluding a Saturday, Sunday and Public Holidays in the Republic of South Africa.  |



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- 3.1.6 "CFE" means Customer Furnished Equipment / Denel 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 / Quotation /Contract.
- 3.1.7 "Codes of Good Practice" means the Broad-Based Black Economic Empowerment Codes of Good Practice, as amended from time to time, and issued in terms of Section 9(1) of the Broad Based Black Economic Empowerment Act, 53 of 2003.
- 3.1.8 "Confidential Information" Shall bear the meaning ascribed to it in clause 15.1.
- 3.1.9 "Customer / Denel" means Denel SOC Ltd and its divisions or the person authorised in writing to represent Denel.
- 3.1.10 "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 or as data required from Denel / Supplier to execute the Purchase Order.
- 3.1.11 "Deliverable(s) / Milestone" means, inter alia, components, systems, sub-systems, parts, hardware, software, documentation, data, services and spares delivered by the Supplier to Denel in terms of the Purchase Order and as further described in the Proposal / Quotation, read together with the Delivery Schedule contained therein.
- 3.1.12 "Delivery Schedule" means the schedule for delivery for the Deliverable(s) or the performance of Services in terms of the Purchase Order, as set out in the Proposal / Quotation.
- 3.1.13 "Foreground Intellectual Property" means Intellectual Property developed during the course of a Purchase Order or as a result thereof.
- 3.1.14 "Goods" means work, training, technical support, logistic support and any other services to be supplied by the Supplier including Deliverables in terms of the Purchase Order.
- 3.1.15 "Incoterms 2012" means the eight and latest published set of pre-defined commercial terms published by the International Chamber of Commerce (ICC).



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- 3.1.16 “Inspection Release Certificate” means a document which is prescribed by Denel and signed by an official duly authorised in terms of Denel’s Delegation of Authority, indicating acceptance of the Goods and, where prescribed, proof of delivery in terms of the conditions of the Purchase Order.
- 3.1.17 “Intellectual Property” means any intangible asset which can be valued taking the form of any patent applications whether these have been provisionally registered or granted, invention, copyright, trademarks, design rights (whether registered or unregistered), know-how, software design, database rights, rights to data gathered and captured and all other intellectual property of whatever nature developed during the contingency of the Purchase Order and these Standard Terms and Conditions of Procurement or any extension.
- “Know-How” means all confidential information of whatever nature relating to the intellectual property and its exploitation as well as all other confidential information generally relating to the manufacture, use and sale of relevant products, including technical information, manufacturing techniques and designs, specifications, formulae, systems, processes, information concerning materials, and marketing and business information generally.
- 3.1.18 “ISO9001” means the ISO (International Organisation for Standardisation) requirements of a quality management system and refers to the current version at the time of placement of a Purchase Order by Denel.
- 3.1.19 “Parties” means Denel and the Supplier and “Party” shall be construed accordingly.
- 3.1.20 “Proposal Quotation” / means the document submitted to Denel which contains the offer from the Supplier, together with any annexures thereto, and to which these Standard Terms and Conditions of Procurement are attached and which shall form the basis of the contractual relationship between the Parties.
- 3.1.21 “Purchase Order” means the Order(s) to be placed by Denel on a Supplier in terms of an agreement, not limited to work, equipment, machinery, tools, materials or services.
- 3.1.22 “Purchase Price” means the price(s) quoted by the Supplier and accepted by Denel for the Goods offered or the price(s) agreed upon between the parties in terms of these Standard Terms and Conditions of Procurement and the Purchase Order.



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3.1.23 “Sub-Contractor” means any person or company who is contracted by the Supplier to supply any part of the Deliverables in terms of these Standard Terms and Conditions of Procurement and the Purchase Order.

3.1.24 “Supplier” means the Party with whom the Purchase Order has been placed by Denel and includes the Supplier’s successors and permitted assignees.

3.2 Any reference to the singular shall include the plural and vice versa;

3.3 A reference to any gender shall include the other genders;

3.4 Any reference to natural persons shall include legal persons and vice versa;

3.5 The headings of clauses in these Standard Terms and Conditions of Procurement are for reference purposes only and shall not be taken into account in construing the contents thereof;

3.6 If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of these Standard Terms and Conditions of Procurement.

3.7 The true intent and meaning of these Standard Terms and Conditions of Procurement are that the Supplier shall in all respects perform and complete the Purchase Order in a workmanlike and cost-effective manner in accordance with the requirements of the Purchase Order.

3.8 Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at date of signature of the Purchase Order, and as amended or substituted from time to time;

#### **4. QUALITY, HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS**

4.1 The Supplier’s Management System shall be in accordance with the requirements specified in requisite standards, namely ISO 9001 and/or AS-9100 , as a minimum, as may be applicable, depending on the scope of supply.

4.2 The Supplier shall ensure that all products and services supplied comply with agreed quality assurance and other applicable requirements as specified in the Purchase Order.

4.3 In addition to the quality related requirements specified above, suppliers to Denel are required to comply with the ISO 14001 and 18001 Standards pertaining to Environmental and the Health and Safety Standards respectively.

4.4 Whilst it is a pre-requisite to comply with the Occupational, Health and Safety Act, 1993 as amended, and other relevant pieces of legislation, it is Denel’s expectation that the Supplier familiarises itself with all other product related legislative requirements, whether stipulated in the Purchase Order or not.





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### **5. PURCHASE ORDER**

#### **5.1 Acceptance of Purchase Order**

- 5.1.1 A Purchase Order shall be placed after Denel has accepted the Supplier's proposal in writing.
- 5.1.2 Should there be a paragraph in the Purchase Order, which contradicts the Supplier's proposal or should Denel make a counter-proposal to the Supplier, the Supplier shall within seven (7) days of receipt of the Purchase Order, refer the matter to Denel in writing for a decision before commencing with the execution of the Purchase Order. Should the Supplier not raise an objection within the period stipulated in this paragraph 0, then the Purchase Order shall be considered accepted (including any counter-offer made by Denel) by the Supplier and the Supplier shall absolve Denel from any and all liability resulting from such contradiction.
- 5.1.3 Acceptance of a Purchase Order implies an undertaking by the Supplier to deliver Goods and/or render Services in terms of the Purchase Order and Supplier warrants that such undertaking shall be fulfilled.

#### **5.2 Amendment of Purchase Order**

- 5.2.1 No amendment of the Purchase Order or of these Standard Terms and Conditions of Procurement shall be valid or in force unless such amendment has been put in writing and has been approved by a representative of Denel who is duly authorized and the Supplier's written acceptance of the amendment by duly authorised representatives of the Supplier.
- 5.2.2 Denel reserves the right, during the execution of the Purchase Order, to require the Supplier, by notice in writing, to alter, amend, omit, add to or otherwise vary any of the Goods and/or Services, without invalidating the Purchase Order. The Supplier shall carry out such amendments and is bound by the same applicable conditions as though the said amendments originally formed part of the Purchase Order.
- 5.2.3 If in the opinion of the Supplier such amendments to the Purchase Order, if carried out, would involve an increase in costs or prevent it from fulfilling any of its obligations or guarantees under the Purchase Order, the Supplier shall notify Denel thereof in writing at least 7 (seven) days before proceeding, and Denel shall decide within a reasonable period whether or not the amendments are to be carried out.

#### **5.3 Additional charges or increased prices**

Unless stipulated to the contrary in the Purchase Order, no additional charges of whatsoever nature shall be accepted by Denel unless the Supplier has obtained Denel's acceptance in writing of such additional charges prior to the execution of the Purchase Order. Failure to obtain such prior approval shall entitle Denel to pay on the basis of the original prices contained in the Purchase Order.



#### **5.4 Deviations**

The Supplier shall not deviate from the requirements of the Purchase Order in respect of samples, patterns, drawings, specifications, processes or procedures or from any approved prototype without the prior written approval of Denel.

#### **5.5 Purchase Order Number**

The Supplier shall quote the Purchase Order and line number in all correspondence, delivery notes, packing lists, VAT invoices and other documents relating to the Purchase Order, and also on all packaging.

### **6. PURCHASE PRICE**

6.1 The Purchase Price, including any Advance Payment, shall be confirmed on the Purchase Order.

6.2 All Purchase Order Prices shall be fixed firm and not subject to revision, unless otherwise specified in the Purchase Order.

6.3 Prices shall be inclusive of all taxes, exchange rate fluctuations, contributions, insurances and all other costs incurred by the Supplier in performing the Purchase Order up to and including Goods' delivery at the precise final location indicated by Denel, of all packaging, protecting, lashing and anchoring materials and of all necessary documents, accessories, devices and/or appropriate tools in view of a complete and functional use and maintenance, and include all payments for the use of any intellectual property rights including those of third parties.

6.4 Where the Purchase Order makes provision for payment of the Supplier's actual travelling expenses by Denel, the Supplier shall obtain prior written approval from Denel.

### **7. TERMS OF PAYMENT**

#### **7.1 Delivery of Invoices**

7.1.1 All payments to the Supplier shall be based on the contractually agreed delivery Milestones or upon delivery of the Goods, following verification of compliance by an authorised Denel employee or its agent.

7.1.2 After each delivery of Goods / Milestone achievement pursuant to a Purchase Order, the Supplier shall send duplicate invoices established in accordance with all applicable legal and Denel requirements, and which shall be supported by a Certificate of Milestone Achievement / Certificate of Conformance or proof of acceptance by the authorised Denel employees or delegated agent and shall clearly indicate the following information, as applicable:



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- 7.1.2.1 Denel's Purchase Order number and date;
- 7.1.2.2 Deliverable / Milestone description;
- 7.1.2.3 Deliverable / Milestone price value;
- 7.1.2.4 VAT claimed;
- 7.1.2.5 Advance payment deduction;
- 7.1.2.6 Total amount claimed;

- 7.1.3 The Supplier shall clearly state on all invoices whether VAT is applicable. VAT invoices shall be submitted for each delivery in accordance with Value Added Tax Act, 89 of 1991.
- 7.1.4 No invoice shall relate to more than one Purchase Order.
- 7.1.5 Invoices and statements shall be forwarded to Denel's Finance Department.
- 7.1.6 Denel reserves the right to return any incorrectly issued invoice to the Supplier.
- 7.1.7 The absence of an express rejection of an invoice shall not constitute acceptance thereof. Payment of an invoice shall not constitute acceptance of any Goods ordered or delivered.
- 7.1.8 For acceptance of Goods by Denel to be valid same must be express and explicit.

### **7.2 Payment Period**

- 7.2.1 Unless otherwise agreed to, duly issued and undisputed invoices shall be paid thirty (30) days after calendar month-end and after receipt of the Supplier's month-end statement by Denel's Finance Department, provided that the Goods have been received and accepted by Denel. However, Denel shall be entitled to withhold payment if the Supplier fails to meet the requirements of the Purchase Order. In this case the Supplier shall have no claim for interest (even on a portion of the price), penalties or any other compensation.
- 7.2.2 Any other relevant payment terms agreed upon will be specified in the particular Purchase Order, particularly in instances where payment is linked to delivery milestones.

### **7.3 Payment Method**

The preferred method whereby Denel settles a Supplier's invoice is with electronic funds transfer (EFT). It is the responsibility of the Supplier to furnish Denel with its correct banking details on a letterhead signed by the Supplier's bankers. Notification of an EFT transaction will only be sent to the Supplier on request. The onus is on the Supplier to inform Denel of any changes in the banking details of the recipient account and this should be furnished on an original letterhead of the Supplier's bankers.

NB: No e-mail or fax documents will be accepted as proof of change of bank account details.



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### 7.4 Set-off

Denel is entitled to set-off any amount owing to Denel by the Supplier against any amount owed to the Supplier by Denel. Where the amounts used for such set-off are in different currencies, the rate of exchange applied for converting the amount concerned into the appropriate currency shall be as charged by Denel bankers. In the case of overseas suppliers, this condition will be applied prior to obtaining approval from the Reserve Bank.

## 8. DELIVERY

### 8.1 Packaging

8.1.1 Unless specified in the Purchase Order and accompanying documentation, packaging materials and methods will be selected by the Supplier to minimise cost of usage and to meet environmental protection requirements.

8.1.2 Every package delivered against the Purchase Order must be clearly marked by the Supplier and shall:

8.1.2.1 be clearly marked with Denel's Purchase Order and item number and the Suppliers name.

8.1.2.2 contain a packing slip showing the name of the Supplier, Denel's Purchase Order and item number and a detailed listing of the contents of the case.

8.1.2.3 be accompanied by a waybill which shall reflect the Supplier's name, Denel's order number and the Goods delivered.

8.1.3 Unless otherwise agreed to in writing Goods shall be packed in full accordance with the accompanying Packing and Marking Specification so that they will not be damaged during transportation or handling. All items shall be properly marked according to (i) applicable rules, especially in the case of dangerous Goods, if any, (ii) Denel's instructions, and at a minimum marking shall set out Denel's Purchase Order number, Supplier's identification, item number, place of delivery, item description, weight and quantity, and all markings required for proper delivery and assembly. Sling and handling points shall be provided with the Goods.

8.1.4 If Denel so requests, the Supplier shall take back all packaging material after delivery.

8.1.5 The Supplier shall be responsible for the packaging of Goods in such a manner as to prevent loss or damage in transit and in compliance with the requirements applicable to the mode of transport concerned. The Supplier shall indemnify Denel against any losses, costs or damages caused by or resulting from faulty, incorrect or inadequate packaging.

8.1.6 Packaging materials or containers, excluding ISO containers, will not be returned to the Supplier except where specifically provided for in the Purchase Order and indicated on the waybills or delivery notes. Where provision is made in the Purchase Order for the return of the packaging materials or containers, such packaging materials or containers will be



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returned at the Supplier's risk and expense. Denel shall, on receipt of a claim supported by a copy of a delivery note, be allowed full credit for materials and containers returned to the Supplier or a third party, at prices quoted for such items.

- 8.1.7 No allowance shall be made for the mass of bags, containers or packaging materials in determining the mass of Goods delivered.
- 8.1.8 No transported items, which arrive in a damaged condition, shall be accepted and the Supplier shall be responsible for the transport cost to and from its premises.

### **8.2 Transportation**

The Supplier undertakes to take all measures necessary to perform proper transportation of the Goods by all appropriate means and using all appropriate equipment and accessories, with the assistance of competent and solvent agents or subcontractors where necessary. The Supplier shall organise transportation of the Goods to the place of Delivery in a manner designed to avoid damage to the Goods, and so as to avoid difficulties in unloading the Goods at Denel's place of delivery.

### **8.3 Technical Documentation - Operating and Maintenance Manuals**

Where so required, the Supplier shall deliver to Denel, at such times as may be agreed but at the latest upon delivery of the Goods, all technical documentation relating to the Goods, such as operating and maintenance manuals, training manuals, drawings, technical data sheets, product safety sheets, mill inspection certificates, certificates of conformity and any other supporting documentation. If not otherwise specified in the Purchase Order, the delivery of software or of Goods including software will include, for maintenance and/or adaptability reasons, all source and object codes relating to it. Such technical documentation or any special tools in relation to Purchase Orders remain the property of Denel and shall be considered as integral part of Goods in the meaning of these Standard Terms and Conditions of Procurement.

### **8.4 Before Delivery**

- 8.4.1 The Supplier shall from time to time and where applicable and relevant, as determined in the Purchase Order, furnish Denel with a descriptive statement, in such form as may be required by Denel, of its planning for the execution of the Purchase Order and of the time when, and the order in which it is proposed that the various elements of the Purchase Order are to be executed: Provided that such statement shall not affect, prejudice or be deemed to have amended the Purchase Order or any of the parties' rights in terms thereof. In addition, the Supplier shall supply periodic progress reports as detailed in the Purchase Order.



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- 8.4.2 The Supplier shall proceed with the activities required for the execution of the Purchase Order at such a rate as to ensure the completion of each part of the Purchase Order on or before the contractual delivery date. Failure by the Supplier to comply herewith shall entitle Denel, without prejudice to or waiver of its rights under the provisions of paragraph 17, to call on the Supplier to take such corrective action as may reasonably be required by Denel.
- 8.4.3 In accordance with paragraph 8.4, the Supplier shall, when so requested in writing, submit to Denel written reports giving full details of the work carried out, including by its Subcontractors, in connection with the Purchase Order, the total quantities of Goods delivered and any other information as may be reasonably requested. Such reports shall be for such periods and contain such additional information as stipulated by Denel.
- 8.4.4 Denel reserves the right to verify the progress and proper performance of the Purchase Order and to conduct any quality investigations and testing it deems advisable. The Supplier shall provide Denel and its representatives free access to the Supplier's workshops at all times.
- 8.4.5 Denel shall be entitled to request the Supplier to appoint a representative at a particular place where work is or will be performed for Denel, or to render such services as may be required by Denel in terms of the Purchase Order.
- 8.4.6 The Supplier shall inspect Goods for compliance with Purchase Order specifications, quality, weight, and physical dimensions, as well as for any damage to the Goods or their packaging.
- 8.4.7 The Supplier is responsible for the integrity and for delivery of the correct quantities.
- 8.4.8 If the Supplier requires the use of Denel's lifting equipment or employees at the place of delivery, Denel will require at least 24 hours' notice and their use shall be at the Supplier's sole risk.

### **8.5 Inspection and Acceptance**

- 8.5.1 Denel shall be entitled to subject any Inspection Release Certificate to:
- 8.5.1.1 written confirmation (certificate of compliance) by the Supplier that the Goods meet the requirements of the Purchase Order in every respect; and/or
  - 8.5.1.2 an audit to determine the effectiveness of the Supplier's control of its Subcontractors' activities; and/or
  - 8.5.1.3 observation of the Supplier's activities (such observation and/or audit shall extend to Subcontractors where appropriate); and/or
  - 8.5.1.4 inspection or testing of the Goods on a continuous or statistical basis.



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- 8.5.2 Where the Purchase Order calls for inspection of the Goods by a person or body not connected to Denel, and the Goods are rejected by such inspecting person or body on reasonable grounds, the Supplier shall bear the cost of such inspection. Where Denel is the acceptance authority, Denel reserves the right to recover its actual costs from the Supplier for all subsequent inspections where the Goods are rejected more than once.
- 8.5.3 Acceptance of Goods is conditional to verification by Denel's delegated person.
- 8.5.4 The Supplier shall give at least 14 (fourteen) days advance notice in writing to the authorised representative of Denel that the Deliverables are ready for final inspection and acceptance.
- 8.5.5 Denel may adopt any means necessary to ensure that the correct Goods have been supplied or that the correct materials are being used/have been used in compliance with the Purchase Order. Any equipment necessary for inspection at the Supplier's premises shall be furnished by the Supplier at its own cost.
- 8.5.6 Denel may, at its sole discretion, opt to inspect the Goods at the Supplier's premises using whatever means it deems fit or as agreed upon between it and the Supplier. This inspection shall not guarantee acceptance of the Goods, which remain subject to formal acceptance after delivery; and shall not constitute automatic acceptance or relieve the Supplier of its obligation in any way whatsoever. The Supplier remains responsible for ensuring that the items conform to the requirements as defined in the Purchase Order and other accompanying documentation that may not be stipulated in the Purchase Order.
- 8.5.7 Denel shall have a reasonable time after receipt of the Goods and before payment to inspect the Goods so as to ensure conformity with the specifications of the Purchase Order, and Goods received prior to inspection shall not be deemed accepted until Denel has run an adequate test to determine whether the Goods indeed conform to such specifications.
- 8.5.8 The use of a sample of the Goods for the purposes of such inspection shall not constitute an acceptance of the Goods by Denel.
- 8.5.9 Final acceptance shall not be conclusive with respect to latent defects, fraud or any other gross mistakes on the part of the Supplier.
- 8.6 Date and Venue**
- 8.6.1 Time of delivery by the Supplier as specified in the Purchase Order is a specific condition of the Purchase Order and of the essence thereof.





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- 8.6.2 Denel reserves the right to cancel and annul the Purchase Order entirely or partly without reference to the Supplier irrespective of the period which may have elapsed from the delivery date stipulated on the Purchase Order to the date of such cancellation, free of penalty and without prejudice to any other rights under the Purchase Order if Goods covered by the Purchase Order are not delivered prior to or on the delivery date stipulated in the Purchase Order, in which event Denel shall in its own discretion be entitled to recover any and all losses or damages suffered.
- 8.6.3 Denel reserves the right from time to time to amend the delivery date originally specified in the Purchase Order provided that the delivery period shall not be shortened without the written consent of the Supplier.
- 8.6.4 All Goods and other items which are to be sent to Denel shall be delivered to the address indicated in the Purchase Order or to any other address subsequently notified to the Supplier in writing by Denel.
- 8.6.5 Before being permitted to enter Denel's property, the Supplier shall produce a delivery note specifying the Goods and quantity, according to Purchase Order to be delivered.
- 8.6.6 Receipt of Goods by Denel shall take place during Working Hours. Confirmation of receipt of Goods shall in no way imply acceptance of the Goods.
- 8.7 Security Measures**
- 8.7.1 The Supplier shall adhere to all security requirements as may be stipulated by Denel from time to time.
- 8.7.2 Before being permitted to enter Denel's premises, the Supplier shall produce a delivery note specifying the Goods and quantity, according to a Purchase Order to be delivered.
- 8.7.3 It is a condition of the Purchase Order that the Supplier's personnel must be in possession of a state-issued identity document when delivering or collecting Goods which necessitates passing through any security gate to gain access to Denel's premises.
- 8.7.4 Denel shall not be responsible for any costs incurred by the Supplier due to non-compliance with 0, and any delays in delivery or collection of Goods caused by such non-compliance and resulting in a delay or delays in the performance of the Supplier's obligations shall be deemed to be a breach of the terms and conditions to the Purchase Order and of these Standard Terms and Conditions of Procurement.
- 8.7.5 The Supplier hereby further grants permission to the security officers at Denel to search the Supplier's or its agent's personnel as well as their vehicles and other articles in their possession on entering and exiting from, or during their presence on the premises of Denel.





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- 8.7.6 In the event of the Supplier entering the property of Denel, the Supplier shall comply with the safety prescriptions set by Denel. The Supplier shall ensure that such precautions as are requisite for the protection of life and property anywhere on Denel's property shall be taken, and the Supplier shall be liable to Denel for any injury or damage to any person or to any property of Denel, caused by or incidental to, the negligence, default of the Supplier.
- 8.7.7 Denel shall not be liable for any loss, damage or injury sustained by any Supplier and/or its employees or subcontractors and/or their employees while on the premises, arising from or caused by any activity conducted by Denel and/or its employees.
- 8.8 Late Deliveries**
- 8.8.1 All late deliveries shall be deemed as breach of contract.
- 8.8.2 No over or under supplies shall be accepted unless Denel is informed, in writing in good time prior to dispatch of the items, of the quantity involved and Denel has agreed in writing that the under or over supplies will be accepted. Over supplies delivered without the written approval of Denel will not be accepted or be paid for. Should Denel after the fact discover that Goods have been oversupplied, it reserves the right to return the Goods or, at its choice, store them, at the Supplier's costs and risks. Under supplied orders will only be finalised once approval from Denel's user has been received.
- 8.8.3 If the Purchase Order is not performed in the specified time, Denel is entitled to cancel the Purchase Order and to claim damages from the Supplier and/or to accept delivery and withhold payment from the Supplier as liquidated damages (as set out in 0 below), without any requirement that Denel give prior notification of default.
- 8.8.4 All late deliveries will be subject to, but not limited to a minimum of 2% (two percent) of Purchase Order value, per day in delay, including Sundays and public holidays, that such Goods are delayed, up to a maximum of 20% (twenty percent) of the Purchase Order value, which shall constitute liquidated damages. Furthermore, Denel reserves the right to apply team and staff standing time charges including any consequential losses, together with penalties imposed on Denel by its client, as a result of any late delivery by the Supplier. The liability imposed upon the Supplier in terms of this clause shall be deemed to be in addition to and not in substitution of any other remedy at Denel's disposal.
- 8.8.5 As soon as it appears to the Supplier that the dispatch of the Goods covered by the Purchase Order for any reason will be delayed, so that the stated delivery date requirements cannot or are unlikely to be fulfilled, the Supplier shall immediately notify Denel in writing and provide all information concerning the reason and/or extent as well as details relating to the efforts the Supplier intends to make in order to avoid delay or expedite delivery. The Supplier shall be obliged to obtain written confirmation from Denel that the Goods are still required. Failing such confirmation Denel shall be entitled to cancel the agreement constituted by acceptance of the Purchase Order and any costs arising out of the return of the Goods by Denel on the account of late delivery shall be for the Supplier's account.



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8.8.6 Denel shall be entitled to retain and apply, as a set-off, as stipulated in 0, any amount which may be due on the Purchase Order to the Supplier or such part thereof as may be necessary for the payment of the cost of making good the aforesaid delay or fault by the Supplier. Should the cost of such making good exceed the balance due to the Supplier, the Supplier shall be liable to pay Denel the amount of such excess.

### **9. STANDARD OR SPECIFIED DOCUMENTATION**

9.1 A complete listing of all data requirements, as applicable, shall be recorded and updated in annexures to the Purchase Order.

9.2 All documents furnished by Denel to the Supplier shall be treated as controlled documents with allocated reference numbers as per the relevant configuration management process.

9.3 Proof of compliance documentation needs to be delivered with Goods or as specified in the Purchase Order/ contract - e.g, Test and Measurement reports; Certificates of Conformance (CoCs) as issued by the original equipment manufacturer; and completed and signed off Process Planning Sheets (PPSs) etc. This documentation may form an integral part of the deliverables to Denel and could be required for processing of payments. Failure to comply could lead to rejection of the specific Goods.

### **10. ACCEPTANCE/REJECTION OF GOODS**

10.1 Denel reserves the right, to reject the Goods or any part thereof, if such Goods do not comply with the quality standards/specifications, described or referenced in the Purchase Order, even if the Goods were previously inspected at a Supplier's premises.

10.2 Denel may accept, without prejudice, a portion of the Goods and, at its option, have the Supplier repair or replace any nonconforming portion of the Goods, at the Supplier's expense. Alternatively, if payment has already been effected for whatever reason, and at the discretion of Denel, the Supplier shall refund Denel all payments already made, or issue a credit note in favour of Denel.

10.3 Should rework be required, it shall be at the Supplier's own cost, including any cost related to removal or delivery or risk of such rejected items. Denel shall at its discretion decide on the disposition of rejected items.

10.4 Denel further reserves the right to recover any cost incurred in respect of effort of inspection and consideration of acceptance of non-compliant Goods delivered.

10.5 If at any time during the warranty period the Goods are found to be defective, the Supplier shall immediately, upon receipt of notification from Denel, remedy the said defect free of charge to Denel by delivery or replacement of the said Goods/Services/. Should the Supplier delay replacement, Denel may have the Goods replaced at the Supplier's expense. The warranty period of replaced Goods shall be the same as for the original Goods. The foregoing warranty shall apply unless specifically excluded.



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10.6 After 15 days following notification of rejection, the Supplier shall be liable to pay warehouse storage charges for the Goods.

### **11. PASSING OF OWNERSHIP**

11.1 Ownership of and responsibility for the Goods shall remain with the Supplier until the Goods have been formally inspected and accepted by Denel at the point of delivery as stated in the Purchase Order.

11.2 Subject to the provisions of paragraph 10, risk of loss or damage of the Goods shall pass to Denel upon delivery at Denel's specified premises, unless otherwise specified in the Purchase Order by way of an appropriate Incoterm in accordance with 'Incoterms® 2012'.

### **12. WARRANTY AND DEFECTIVE GOODS**

12.1 The Supplier warrants that the supplied Goods are free from defects in design, material and workmanship and that the Goods satisfactorily fulfil the performance requirements stipulated by Denel.

12.2 The Supplier warrants further that the said Goods meet all applicable statutory requirements and standards, especially those relating to the environment, safety and employment or labour laws and regulations (collectively, 'the Supplier's Warranty') and warrants the Goods for a period of twenty four (24) months after delivery or as otherwise specified and mutually agreed upon, excluding fair wear and tear.

12.3 Neither approval by Denel of the Supplier's design nor acceptance of the Goods shall absolve the Supplier from liability for damages resulting from the defective Goods and/or unsatisfactory performance thereof.

12.4 Any representations or warranties included in Supplier's catalogues, brochures, sales literature and quality systems shall be binding on the Supplier.

12.5 The Supplier shall be liable for any direct, indirect, incidental, special and consequential losses and damages, including loss of profits, incurred by Denel as a result of any delays in delivery, any defects in the Goods or any other deficiencies in the Supplier's performance.

12.6 Where capital equipment or accessories are purchased, the Supplier shall ensure that sufficient spares are available for a minimum period of 10 (ten) years or as specified in the relevant contract or Purchase Order after receipt of the equipment by Denel. The Supplier further warrants supplying the Goods, and parts or components thereof for repair, maintenance or extensions, through the whole period of the Purchase Order, including the warranty period, and further warrants that their production or distribution will not be halted. If the Supplier decides to stop production of all or part of the Goods after the end date of the Purchase Order, the Supplier shall inform Denel of this fact at least one year in advance or as soon as the Supplier becomes aware, so that Denel may take the necessary corrective measures.



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12.7 The Supplier agrees that the warranties provided (and such other rights accruing to Denel) under this paragraph may be assigned, following an objective assessment of future impact on Denel's business and upon written notice to the Supplier, to any of Denel's affiliates or subsidiaries.

**13. Export / Import Licence or Permit**

13.1 The Supplier shall notify Denel at least 30 days prior to shipment of controlled Goods to enable Denel to apply for an import permit timeously.

13.2 Denel shall not be liable for any losses suffered or expenditure incurred by the Supplier or any other person (including losses suffered or expenditure incurred in respect of the manufacture, supply, transport or delivery of supplies), provided it was responsible for applying for such a permit in the first instance, due to the government of the country of origin or any other government failing or refusing to grant, on the grounds of existing legislation, an export license or permit, or cancelling an export permit or license that has been issued. In such an event, Denel shall be entitled to cancel the Purchase Order without any cost implication. All payments already effected shall be repaid to Denel.

13.3 The provisions of paragraph 13.2 shall apply mutatis mutandis where the South African Government refuses to issue an export or import permit or cancels an export or import permit that has been issued.

13.4 The Supplier shall ensure that the provisions of any Act or Regulations prohibiting the importation into the Republic of South Africa of certain insects, fungi, diseases or pests by way of certain types of packing materials and containers are complied with, and that any such guarantee or certificate that may be required in terms of such Act or Regulations is obtained and provided at its own expense. Where the Supplier fails to comply with the provisions of such Act(s) or Regulations and the consignments are as a result seized, destroyed or delayed at the port of entry or elsewhere in South Africa, the Supplier shall be liable for any delays, demurrage or any other loss arising from such seizure, destruction or delay.

13.5 All Goods to be imported shall be imported in the name of the Supplier/Subcontractor and be re-consigned by it to the delivery address stated in the Purchase Order.

**14. Controlled Defence Supplies**

14.1 Controlled defence supplies are any one or a combination of the following:

14.1.1 United States (US) origin items controlled by US legislation, as described in International Traffic in Arms Regulations (ITAR).

14.1.2 Other foreign origin items controlled by the applicable foreign countries.



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14.1.3 South African government non-proliferation controlled items.

14.1.4 South African government conventional arms controlled items.

14.2 Denel must be informed in writing before commencement of performance pursuant to the Purchase Order, and Denel reserves the right to cancel the Purchase Order at no cost to Denel if any article, technology or Proprietary Information is of US origin. A copy of such Export Permit, License or Royalties payable, must be forwarded with the delivery note and Invoice to Denel. If the Supplier fails to inform Denel accordingly, or to forward a copy of such Export Permit, License or Royalties, the Supplier shall be liable for all claims in respect of the use of any article, technology or Proprietary Information and the Supplier indemnifies Denel and holds it harmless against any claims arising or legal cost and losses resulting from the infringement or alleged infringement by or on behalf of Denel.

14.3 If the scope of supply includes items, technical data or services subject to arms control legislation of the Republic of South Africa (RSA) or that are subject to end-user restrictions by the US government or any other foreign government, the Supplier shall, upon delivery, supply Denel with all relevant documentation. The documentation in question forms an integral part of the deliverables to Denel for processing of any payment.

### **15. Special Tooling, Jigs and Fixtures or Free-issued Materials**

15.1 Where special tooling, jigs and/or fixtures or any material (whether raw or otherwise) is free issued or is paid for by Denel and utilised by a Supplier in the manufacturing process of a custom-manufactured item, these items remain the Sole Property of Denel, irrespective of storage location. When a Supplier is required to store these items, it will ensure suitable preservation and storage of such items for future use.

15.2 The onus of establishing that the cost of such equipment has not been included in the price shall remain with the Supplier.

15.3 The Supplier shall periodically, at least annually, supply Denel with a certified inventory listing of all Tools, Jigs and fixtures and/or materials in their possession, belonging to Denel. The inventory listing shall include a report confirming the condition and estimated replacement value thereof.

15.4 The Supplier shall notify Denel in writing of any anticipated cost to preserve, maintain or service such Tools, Jigs or fixtures and materials prior to executing any maintenance.

15.5 The Supplier shall be held responsible for these assets and shall be liable for their replacement in the event of loss or damage. The Supplier shall ensure that adequate and all risk insurance cover is taken with a reputable insurance company. Denel shall be entitled to request proof of such insurance.



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- 15.6 The Supplier shall ensure that the said equipment is delivered in good order at the premises of Denel, properly marked with The Order and the relevant code number as supplied by Denel for the finished items.
- 15.7 Where the Purchase Order is carried out on premises rented by the Supplier, the landlord shall be informed beforehand by the Supplier of items on the premises that are Denel's property, and the Supplier shall submit written proof to Denel that such notice has been received by the landlord.
- 16. Handling of Denel -Furnished Equipment**
- 16.1 Denel shall at all times endeavour to make available, at agreed times, all identified products / equipment to the Supplier should such a need be necessary. The onus is on the Supplier to ensure that proper or specified handling procedures are followed to prevent damage and / or degradation to the quality of the products. Any damage or degradation of the product in the custody of the Supplier shall be for the account thereof unless the Supplier can provide proof that all reasonable and specified handling procedures were followed.
- 16.2 The Supplier shall not alter the design of any Denel furnished items without the written authority of Denel. 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 Denel 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 Denel to provide a rectified CFE to the Supplier.
- 16.3 Denel shall not be liable for any CFE that is defective, or which was modified without the prior written authority and approval of Denel and to the extent that this impact on the functionality or utility of the System delivered, any direct and/or consequential costs incurred to rectify the defect shall be for the account of the Supplier.
- 16.3.1 The CFE may not be transferred to any third party without the written permission of the relevant Denel's Authorised Representative.
- 16.3.2 The CFE, together with the applicable Transfer of Ownership Certificate, shall be returned to Denel.
- 16.4 When Denel issues raw material and/or parts to a manufacturer for the purpose of manufacturing a required item, and the manufacturer scraps the manufactured item due to its error, the cost of the reissued material and/or parts will be for the manufacturer's account.
- 16.5 Denel shall recover the cost of the reissued materials and/or parts at replacement value from the specific Supplier. Where payment is still due to the said Supplier, this cost shall be deducted from such payment. Alternatively, should payment already have been effected for whatever reason, and at the discretion of Denel, the Supplier shall refund Denel all payments already made, or issue a credit note in favour of Denel.



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### 17. Handling of Explosives

- 17.1 To ensure that explosives are safe and of a good quality when delivered to Denel, the Supplier shall supply the following documentation with every consignment of explosives or any item that contains any explosives:
- 17.1.1 A copy of the issue voucher, consignment note and other official documents relative to the dispatch of the explosives.
  - 17.1.2 The manufacturer's dispatch note.
  - 17.1.3 Official test results certified by the relevant Quality Department.
  - 17.1.4 Certificate to confirm date of manufacture.
  - 17.1.5 An official document from the manufacturer, stating that the explosives are safe for handling, storage and transport, and indicating the expected shelf-life when stored in an explosives magazine.
  - 17.1.6 Material Safety Data Sheet.
  - 17.1.7 Explosives UN Code and class certification.
  - 17.1.8 If applicable, an Armscor K225 issued by the Armscor Quality Representative.

### 18. HAZARDOUS CHEMICAL SUBSTANCES

The Supplier of hazardous chemical substances shall, in accordance with the Occupational Health and Safety Act, 85 of 1993 as amended, provide a Material Safety Data Sheet containing sufficient information for the safe handling and storage of hazardous materials and safe disposal of waste generated as specified in Regulation 7(1) of the General Administrative Regulations of 1994, as may be amended, or any such requirements as may be required.

### 19. ACCESS TO AND USE OF SUPPLIER'S FACILITIES

- 19.1 Denel, its contractors or agents shall be granted access to the Supplier's facilities at all reasonable times. The Supplier shall further ensure that Denel, its contractors or agents are granted access to the facilities of the Supplier's Subcontractors if required.
- 19.2 The Supplier shall allow the use of its facilities and shall give such assistance as necessary to enable Denel, its contractors or agents or their employees to carry out any work or task in connection with the Purchase Order.





## **20. CONFIDENTIALITY**

20.1 Confidential Information is information of a confidential or proprietary nature in whatever form, and without limiting the generality of the term, shall include:

20.1.1 any of the following information and/or material disclosed or communicated (before or after the conclusion of the Purchase Order) by Denel to the Supplier in connection with or arising out of the relationship:

20.1.1.1 technical, scientific, commercial, financial or market information, know-how or trade secrets;

20.1.1.2 data concerning business relationships, processes, services, personnel, architecture, information, demonstrations, or machinery;

20.1.1.3 plans, designs, drawings, functional and technical requirements and specifications;

20.1.1.4 Information relating to the Denel's strategic objectives and planning for both its existing and future Information technology needs;

20.1.1.5 information contained in or constituting Denel's hardware or software, including third party products, and associated material documentation;

20.1.1.6 intellectual property that is proprietary to Denel or that is proprietary to a third party and in respect of which Denel has rights of use or possession;

20.1.1.7 information concerning faults or defects in Denel's systems, hardware and/or software or the incidence of such faults or effects;

20.1.1.8 agreements to which Denel is a party;

20.1.1.9 all other information in whatever form, whether or not subject to or protected by common law or statutory laws relating to copyright, patent, trademarks, registered or unregistered, or otherwise;

20.1.2 Information regarding the relationship, the fact that discussions are occurring concerning the relationship, any of the terms and conditions applicable to or being discussed by the Parties in relation to the relationship or the existence of the Purchase Order and these Standard Terms and Conditions of Procurement;

20.1.3 information which by its nature or content is identifiable as confidential and/or proprietary to Denel and/or any third party in relation to or arising out of the relationship, or which although not directly related to the relationship is nevertheless disclosed as a result of or in connection with the Parties' discussions of the relationship.





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- 20.2 The Purchase Order and all documents and the like supplied by Denel shall be strictly confidential and no details thereof shall be disclosed without the prior written consent of Denel. The Supplier is obliged to keep and protect this confidentiality and it should not disclose these details under any circumstances to anyone unless permission is granted by authorized representatives of Denel. The Supplier shall establish rules to secure the confidentiality.
- 20.3 During the execution of the Purchase Order governed by these Standard Terms and Conditions of Procurement, as well as for an indefinite period thereafter, the Supplier hereby covenants that the proprietary information shall:
- 20.3.1 Be protected and kept in strict confidence by the Supplier, with the same degree of precaution and safeguards utilised in treating its confidential information of like importance, but in no case any less than reasonable care;
  - 20.3.2 Be only disclosed to and used by those persons within the Supplier's organisation who have a need to know, and solely for the purpose specified in the Purchase Order and these Standard Terms and Conditions of Procurement;
  - 20.3.3 Not be used in whole or in part for any purpose other than the purpose of the Purchase Order and these Standard Terms and Conditions of Procurement, without the prior written authorisation of Denel;
  - 20.3.4 Neither be disclosed nor caused to be disclosed, whether directly or indirectly, to any third party or persons other than those mentioned in paragraph 0, which for the avoidance of doubt, precludes disclosure to the Supplier's parent company as well as any of its affiliates, including other divisions and/or subsidiaries of the said parent company, without having been specifically authorised in writing by Denel;
  - 20.3.5 Neither be copied, nor otherwise reproduced or duplicated in whole or in part where such copying, reproduction or duplication has not been specifically authorized in writing by Denel.
- 20.4 The Supplier is responsible for establishing an effective system to keep the confidentiality by applying observation measures on its employees and the employees of its subcontractors.
- 20.5 If Denel discovers that the Supplier has disclosed any Confidential Information, then Denel reserves the right to stop the Supplier from executing any Purchase Order without justification if security circumstances demand so, and the Supplier shall be liable for any related damages and/or costs.
- 20.6 Any information supplied by Denel shall remain the sole property of Denel and shall, on termination or expiry of the Purchase Order and these Standard Terms and Conditions of Procurement on demand by Denel, be returned or disposed of as prescribed by Denel.



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20.7 After the termination of these Standard Terms and Conditions of Procurement and expiry of the Purchase Order, the Supplier shall not make any use of any of the Confidential Information in any manner whatsoever, nor shall it in any manner whatsoever disclose such confidential information to any other person.

### **21. DENEL'S INTELLECTUAL PROPERTY RIGHTS**

21.1 The Supplier acknowledges Denel's sole and exclusive ownership of and/or rights in and to the Intellectual Property and undertakes not to, at any time or in any manner, contest the validity of Denel's exclusive ownership of and/or rights, whether now existing or hereinafter acquired.

21.2 The Supplier acknowledges Denel's role and that the Supplier has had no part in the creation or development of, no prior knowledge of, and has no rights to or claims on any elements of Denel's rights to the Intellectual Property.

21.3 Where the Purchase Order calls for the design or development of an item, the intellectual property rights arising from such design or development, including but not limited to patents, copyright, designs and know-how, whether registerable or not, as well as any rights which may in future arise in respect of all improvements thereto, shall vest in Denel, and only Denel shall have the right to recover royalties, or to apply for the registration of patents, trademarks and/or designs relating to any new device, process, machinery, equipment, etc. which may be developed in the execution of the Purchase Order. The Supplier undertakes to honour Denel's intellectual property rights and all future rights by, inter alia, keeping the know-how and all undisclosed or unpublished material confidential. The Supplier furthermore undertakes not to use, apply, sell or in any way obtain any benefit from the intellectual property rights or the know-how, directly or indirectly, either by itself or in association with any person, otherwise than in accordance with the terms of the Purchase Order.

21.4 The Supplier acknowledges and agrees that Denel is entitled to use the intellectual property rights in any manner whatsoever, or to restrict or prohibit the use thereof.

21.5 The Supplier accepts that, upon termination of the Purchase Order for whatever reason, it shall not have the right to use or make available the intellectual property rights relating to the items, and that all authorisations granted in terms of the Purchase Order shall be terminated. In this regard the Supplier undertakes to immediately hand over to Denel on request all documents, data packs, drawings and technical data, in any medium whatsoever, relating to the intellectual property rights which came into existence during the execution of the Purchase Order.

21.6 The provisions of this paragraph shall remain in force, notwithstanding the termination of the Purchase Order for whatever reason.

21.7 The Supplier shall, in carrying out the Purchase Order, report to Denel on any manufacturing or testing apparatus or process used or developed, and shall furnish full details thereof.



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- 21.8 Should the Supplier develop or design any variation, modification or improvement to Denel's Background Intellectual Property during the execution of the Purchase Order, it shall promptly notify Denel in writing and furnish full details thereof. All rights in respect of such variations, modifications or improvements shall vest in Denel. The Supplier shall, when so requested by Denel, assist in bringing about the registration of such variation, modification or improvement in Denel's name or that of any person as may be stipulated by Denel.
- 21.9 The Supplier shall be obliged to include the provisions of paragraphs 0 to 16.7 mutatis mutandis in any contract with a subcontractor, in such a way that any rights mentioned in paragraphs 0 to 16.7 shall irrevocably vest in Denel and be directly enforceable against the Subcontractor by Denel.
- 21.10 The Supplier shall, immediately on becoming aware thereof, inform Denel both in writing and verbally of any infringements or apparent infringements or challenge or threat to Denel's Intellectual Property by any person together with all parties thereto which are known to the Supplier, and undertakes to assist Denel fully in taking such action as Denel deems appropriate.
- 21.11 The Supplier shall have no claim of whatsoever nature against Denel arising from or flowing from any damages suffered by the Supplier as a result of any patent or trade mark relating to any of the Goods sold being infringed, cancelled, breached or otherwise set aside or declared invalid.

## 22. LIABILITY FOR ROYALTIES

The Supplier shall, where applicable, pay all royalties and expenses and be liable for all claims in respect of the use of intellectual property rights for or in connection with any article or the use of any article supplied or used under the Purchase Order, and shall indemnify Denel against any claims arising or legal costs and losses resulting from the infringement or the alleged infringement of such rights.

## 23. LIMITATION OF LIABILITY AND INDEMNITY

The Supplier shall indemnify, hold harmless and defend Denel, its agents, its contractors and employees, from and against all claims, liabilities, damages, losses and expenses, including attorneys' fees on the scale as between attorney and own client, arising out of or in any way connected with the Goods provided and/or Services rendered under the Purchase Order, including, without limitation, any claim by a third party against Denel alleging that the Goods provided under the Purchase Order and these Standard Terms and Conditions of Procurement infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes.



## **24. REMEDIES FOR INCORRECT CLASSIFICATION OR FALSE CLAIMS**

- 24.1 Where a Purchase Order has been awarded to a Supplier by virtue of a statement made by the Supplier to the effect that the Goods offered by it are entitled to a certain classification or preference for local production, manufacture or assembly, or by virtue of a statement made by it that it is subject to Denel's preferential procurement policy, and such preference is granted by Denel, and it is subsequently shown to the satisfaction of Denel that such statement was false, Denel may, in addition to any other remedy it may have –
- 24.1.1 summarily cancel the Purchase Order and recover from the Supplier any costs, losses or damages incurred or suffered by Denel as a result of the award of the Purchase Order to the Supplier; or
  - 24.1.2 allow the Supplier to proceed with the Purchase Order and recover from the Supplier as pre-estimated damages an amount calculated to be fair compensation to Denel. The compensation and penalty, if applicable, may be deducted from the Price.

## **25. APPROVAL OF SUBCONTRACTORS**

- 25.1 If so requested by Denel, the Supplier shall timeously and in writing submit to Denel for its approval the names of the proposed subcontractors, and the Supplier may not enter into any subcontract for the execution of the Purchase Order or any part thereof, or for the manufacture or supply of materials to be used in the execution of the Purchase Order beforehand.
- 25.2 If the Supplier is authorised to sub-contract all or part of their obligations to third parties, such sub-contracting shall be at its sole expense and under its sole responsibility. The Supplier shall inform all sub-contractors of the provisions of these Standard Terms and Conditions of Procurement as well as those of the Purchase Order, and shall provide them with all information regarding Denel's requirements, especially in respect of applicable safety rules. Denel reserves the right to refuse any of the Supplier's sub-contractors that are not compliant with these conditions.
- 25.3 The Supplier shall not be released from its liabilities or obligations under the Purchase Order by any arrangement whatsoever with its Subcontractors in the event of the latter breaching any of the provisions of the Purchase Order or of these Standard Terms and Conditions of Procurement.
- 25.4 The Supplier shall keep such records of its subcontractors and their capabilities and shall furnish such returns as may reasonably be required by Denel so as to ensure proper and accurate performance in the execution of the Purchase Order.



## **26. PROHIBITION OF EMPLOYMENT**

The Supplier shall not, for the duration of the Purchase Order and for a period of 12 (twelve) months after completion thereof, employ any employee or former employee of Denel who is or was in any way involved with the Purchase Order.

## **27. BREACH OF CONTRACT AND DAMAGES**

27.1 If, subject to the provisions of paragraph 10

27.1.1 the time has expired within which the Purchase Order or any item thereof should have been completed; or

27.1.2 the Supplier refuses or fails to carry out the Purchase Order in accordance with Denel's instructions, or is not making such progress with the Purchase Order to ensure completion on the contractual delivery date, or in the event of any other failure or default of the Supplier, Denel may give notice in writing to the Supplier to remedy the failure or default and, should the Supplier fail to comply with the notice within 14 (fourteen) days after the date thereof; or

27.1.3 the Supplier goes into provisional or final sequestration/liquidation or is placed under business rescue; or

27.1.4 the Supplier goes into voluntary liquidation or, if he is an individual, who voluntarily surrenders his estate; or

27.1.5 the relationship of the Supplier is dissolved, in the case of a partnership; or

27.1.6 the Supplier makes an offer of compromise or composition to its creditors, or attempts to do so; or

27.1.7 the Supplier fails to take any steps to have a judgement set aside within 7 (seven) days after a judgement / sentence was passed against it; or

27.1.8 the Supplier permits the attachment of any of its assets and fails to uplift such attachment within 7 (seven) days after the date of attachment; or

27.1.9 the Supplier, where he is a natural person, no longer qualifies to be director of a company in terms of the provisions of the Companies Act, 71 of 2008; or

27.1.10 should there be any change as regards:

27.1.10.1 the controlling shareholding in the Supplier, where the Supplier is a Company; or



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27.1.10.2 the members, where the Supplier is a Close Corporation; or

27.1.10.3 the Supplier's form of business;

27.2 Denel may,

27.2.1 in any such event, without prejudice to any of its rights under the Purchase Order, allow the Supplier to proceed with the Purchase Order in whole or in part, or cancel the Purchase Order in whole or in part and without incurring any liability for resultant damages which the Supplier may suffer and Denel shall under no circumstances be responsible for direct, indirect, special, incidental or consequential damages or loss of profits arising from the cancellation or annulment of the Purchase Order; or

27.2.2 Cancel the Purchase Order in whole or in part and direct the Supplier by notice in writing to suspend or discontinue work in connection with the Purchase Order in whole or in part on the day stated in the notice, and may itself execute or complete the Purchase Order or conclude a contract with any other person for the execution or completion of the Purchase Order or procure other Goods in substitution for those neglected to be manufactured or supplied or for those rejected, and Denel may recover from the Supplier the difference between the cost of such procured Goods and the Price indicated in the Purchase Order (if the latter is lower), as well as any other costs and expenses (including the cost of any additional transport) which Denel incurred or may incur upon the Supplier's default; or

27.2.3 Claim direct, indirect, special, consequential and incidental damages as may have been suffered by Denel as a result of the Supplier's failure or default; or

27.2.4 Where the Purchase Order calls for the delivery of spare parts lists, catalogues, technical manuals or any other documentation, withhold payment of any amount due to the Supplier until such lists, catalogues, manuals and other documents are delivered.

## 28. TERMINATION OF CONTRACT / PURCHASE ORDER

28.1 Denel reserves the right to cancel the Purchase Order by notice in writing without furnishing any reasons therefor, and in the event that the Supplier is not in default, Denel shall be liable only for payment in respect of:

28.1.1 Goods completed at the date of such notice at prices specified in the order;

28.1.2 Work in progress at prices to be agreed upon but such prices shall in no instance exceed a pro rata proportion of the cost of the items as specified in the Purchase Order;

28.1.3 Raw materials which have been ordered by the Supplier for this particular order, at ruling market prices, provided that such raw materials shall be delivered to Denel;



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28.1.4 The reasonable cost of any special equipment such as jigs, tools and templates which cannot be utilised in the normal day to day working process carried out by the Supplier, provided that such equipment is delivered to Denel and only to the extent that the cost thereof has not already been paid for by Denel.

28.2 The termination period shall be stipulated in the notice by Denel.

28.3 Such written notice of termination shall be served on the Supplier by Denel and it shall specify the extent to which the Purchase Order is terminated as well as the notice date and period.

28.4 Upon receipt of such notice, the Supplier shall:

28.4.1 immediately stop work on the Purchase Order to the extent specified;

28.4.2 place no further Purchase Orders for materials, services or facilities affected by the notice;

28.4.3 terminate all Purchase Orders and subcontracts to the required extent of the notice;

28.4.4 take all reasonable action to limit any further or other expenses related to the work so terminated;

28.4.5 continue work that has not been terminated;

28.4.6 protect and preserve Denel's property relating to the Purchase Order and deliver it to Denel if so instructed.

## 29. DISPUTE RESOLUTION

29.1 All disputes, differences or questions between the Parties to the Agreement with respect to any matter or thing arising out of or relating to the Agreement which cannot be resolved in good faith by means of direct negotiations and conciliation, within fifteen (15) days of such dispute arising, shall be resolved by mediation under the Rules of the Arbitration Foundation of Southern Africa (AFSA) (or its successor or body nominated in writing by it in its stead).

29.2 If mediation fails, the Parties must refer the dispute within fifteen (15) days for resolution by arbitration (including any appeal against the arbitrator's decision), the selected Arbitrator must be approved by both Denel and the Supplier. The arbitration shall be conducted in Pretoria, Republic of South Africa (or any other place as may be so agreed to by the Parties) under the then rules for expedited arbitration of AFSA. If Parties cannot agree on the arbitrator within ten (10) days after referral, the arbitrator shall be appointed by the Secretariat of AFSA.

29.3 The arbitration proceedings shall be conducted in the English language.





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- 29.4 The agreement to arbitration shall not prevent a party from obtaining urgent interim relief by way of injunction, interdict or any other similar legal remedy that may be available from any court of competent jurisdiction, pending arbitration on grounds that such court would grant by way of interim relief.
- 29.5 The Parties agree that any arbitration award or outcome shall be binding to the Parties and shall without further process be made an order of any court of competent jurisdiction by both parties.
- 29.6 The provisions of this clause serve as an irrevocable consent by all the Parties to any of the proceedings in terms hereof and the Parties shall not be entitled to withdraw from the proceedings or to maintain that they are not bound by such provisions; and are divisible from the rest of this Agreement and shall remain in full force and effect, notwithstanding termination of this Agreement for any reason whatsoever.

### 30. INSURANCE

The Supplier shall take out and maintain in force all insurance policies necessary to cover its liability under these Standard Terms and Conditions of Procurement. The Supplier agrees to provide Denel with evidence of insurance pursuant to any Denel requirements regarding insurance coverage, and to comply with such requirements, including third party liability as well as liability towards Denel.

### 31. FRAUD & CORRUPTION

31.1 Should Denel conclude on reasonable grounds –

31.1.1 that the Supplier has promised or caused to be promised on its behalf, offered or given a bribe, commission, gift, loan, benefit or other consideration of whatever nature to an official, employee or any other person in the course of obtaining or executing the Purchase Order; or

31.1.2 that the Supplier has acted fraudulently or in bad faith in obtaining or executing any contract with Denel, any public body, company, firm or person, or has in the conduct of its business failed to observe statutory requirements, resulting in a criminal conviction;

then Denel may (i) terminate the Purchase Order and recover from the Supplier the amount of any loss suffered by Denel resulting from such termination or (ii) recover in full from the Supplier any loss sustained by Denel in consequence of any breach of clause 23, whether or not the Purchase Order has been terminated.

31.2 Any potential conflict, such as employees of Denel having an interest, whether directly or through family members, in the Supplier's organization; or interests between the supplier and Denel, shall be declared in writing by the supplier prior to accepting a contract.





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### 32. WAIVER OF RIGHTS AND RETENTION OF SECURITIES

- 32.1 Irrespective of the amount paid by Denel nor any extension of the completion date granted by Denel shall prejudice Denel's rights against the Supplier or absolve the Supplier of its obligations for the due execution of the Purchase Order, or be interpreted as approval of the Goods delivered; and no payment shall incur a liability for Denel to pay for alterations, amendments or additional work not ordered in writing by Denel, and such payment shall not absolve the Supplier of its obligations regarding the payment of damages, whether due, ascertained, liquidated or not.
- 32.2 Denel may retain any part of the securities and retention money held by it for as long as the Purchase Order is not completed to the satisfaction of Denel or for as long as any amount is owing to Denel by the Supplier.

### 33. COMPLIANCE WITH BBBEE REQUIREMENTS

- 33.1 Denel shall apply the provisions of the Broad Based Black Economic Empowerment Act, 53 of 2003 or as amended and its Codes of Good Practice in the procurement of Goods. As a general rule preference shall be given to local suppliers with a BBBEE level from 1 to 4. In addition to the BBBEE level company status, chances of success will increase if Suppliers of products and Services have substantial Black and Black Female shareholding and the Employment Equity profile is aligned with the Economically Active Population of the relevant province or South Africa.
- 33.2 In order to improve Denel's spend on Black-owned and Black Women-owned Suppliers, Denel reserves the right to ring-fence or set aside certain categories of products and services for such companies.
- 33.3 Joint ventures between Black-owned and Black Women-Owned Suppliers and White – Owned established Suppliers shall be viewed favourably in instances where suitable Black-Owned and Black Women-Owned Suppliers are not available.

### 34. GENERAL

- 34.1 The latest issue of the Denel Standard Terms and Conditions of Procurement (this document) shall supersede any other conditions of purchase. However, in the event that there are contradictory requirements, the specific conditions stipulated in the Purchase Order shall take precedence over the relevant conflicting provisions of these Standard Terms and Conditions of Procurement.
- 34.2 This document and the Purchase Order constitute the entire agreement between the Parties.
- 34.3 No variation, addition or agreed cancellation of these Standard Terms and Conditions of Procurement, including this clause shall be of any force or effect unless reduced to writing and signed by both parties and their duly authorised signatories.



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- 34.4 These Standard Terms and Conditions of Procurement and the Purchase Order do not establish either Party as being the agent or legal representative of the other Party for any purposes whatsoever, without the first mentioned Party's written statement authorising the latter Party legally to act on behalf of the first mentioned Party to the extent of authorisation provided for therein. Neither Party is granted, unless otherwise specially authorised, any right or authority to assume or create any obligation or responsibility, express or implied, in and on behalf or in the name of the other Party, or to bind the other Party in any manner or form whatsoever.
- 34.5 These Standard Terms and Conditions of Procurement and the Purchase Order further do not confer any exclusive rights on any one Party and do not prohibit the Parties in any way whatsoever from conducting their normal business activities or from entering into any future agreements or arrangements with any third party.
- 34.6 Denel and the Supplier shall use the English language in which the Purchase Order was issued in all documents relating to or resulting from the Purchase Order. Documents in other languages shall be valid only if they are accompanied by a translation in the language of the Purchase Order certified as correct by a sworn translator. The party submitting a translation shall be responsible for any damages resulting from a mistake in such translation. Should the interpretation of the documents differ, the interpretation of the document in the original language shall take precedence over the translated document.
- 34.7 No relaxation or indulgence granted to the supplier by Denel from time to time shall be deemed to be a waiver of Denel's rights in terms of the Purchase Order, nor shall any such relaxation or indulgence be deemed to be an innovation or waiver of the terms and conditions of the Purchase Order.
- 34.8 The Supplier shall not cede, assign or transfer a Purchase Order or any portion thereof or any rights arising therefrom, to any third party without the written consent of Denel first having been had and obtained thereto and which consent may be refused at the discretion of Denel and without furnishing any reasons therefor. Denel shall be entitled to assign the Purchase Order, or any rights under it, upon giving written notice to the Supplier.
- 34.9 These Standard Terms and Conditions of Procurement, or any terms or conditions incorporated in the Purchase Order, shall be governed by and interpreted in accordance with the laws of the RSA, and the Supplier shall conform to all statutory requirements of the government of the RSA with regard to such Goods. In particular, the Parties agree that due to the nature of the supply made under the Purchase Order, 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:
- 34.9.1 The National Conventional Arms Control Act (Act 41 of 2001);
  - 34.9.2 The Regulation of Foreign Military Assistance Act (Act 15 of 1998);
  - 34.9.3 Anti-Personnel Mines Prohibition Act (Act 36 of 2003);



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34.9.4 Firearms Control Act (Act 60 of 2000);

34.9.5 Non-Proliferation of Weapons of Mass Destruction Act (Act 87 of 1993);

**35. DOMICILIUM AND NOTICES**

35.1 The Parties select the addresses stated in the Purchase Order as their respective domicilia citandi et executandi.

35.2 Where possible, the address shall indicate the individual from whom attention is required.

35.3 Any notice or communication required or permitted to be given in terms of these Standard Terms and Conditions of Procurement and the relevant Purchase Order shall be valid and effective only if in writing.

35.4 Any Party may by notice to the other Party change the physical address or its telefax number chosen as its domicilium citandi et executandi to another physical address or its postal address to another postal address, provided that the change shall become effective by the tenth (10th) business day from the receipt of the notice by the addressee.

35.5 Any notice to a Party shall be deemed to be valid if:

35.5.1 delivered by hand to the addressee's address set out above, in which event it shall be deemed to have been received on the date of delivery; or

35.5.2 sent by facsimile, in which event it shall be deemed to have been received on the date of transmission of the facsimile.