

Smiths Detection United Kingdom Terms & Conditions of Purchase

1. Definitions

The following terms shall have the meanings set forth below:

- (a) "Smiths" means **Smiths Detection – Watford Limited**, incorporated in England and Wales under company number 0480992, whose registered office and principal place of business is at 459 Park Avenue, Bushey, Watford, Hertfordshire, WD23 2BW, UK. If a subsidiary or affiliate of Smiths is identified on the face of the Contract than "Smiths" means that subsidiary, or affiliate.
- (b) "Contract" means the instrument of contracting, such as "PO", "Purchase Order, or other such type designation, including all referenced documents, exhibits and attachments. Likewise, "PO" or "Purchase Order" as used in any document constituting part of this Contract shall mean this Contract. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (c) "Engineering Change" or "EC" or "ECO" means any mechanical, software or electrical change in supplier, drawings, specifications, designs, bills of material or product standards involving equivalent part substitutions or internal relocation's of parts which would affect performance, reliability, function, safety, serviceability, appearance, quality, dimensions or tolerances of the Work.
- (d) "Seller" means the Party identified on the face of the Contract with whom Smiths is contracting.
- (e) "Smiths Procurement Representative" means a person authorized by Smiths' procurement organization to administer and/or execute this Contract.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2. Acceptance of Contract

- (a) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract.
- (b) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby rejected by Smiths and have no effect unless expressly accepted in writing by Smiths.

3. Precedence

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule including any continuation sheets, as applicable, and any special terms and conditions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these Terms and Conditions; (4) the Country Terms and Conditions; and (4) any Statement of Work.

4. Contract Direction

- (a) Only the Smiths Procurement Representative has authority to change this Contract. Any changes to the Contract must be in writing.
- (b) Smiths engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Smiths Procurement Representative.

5. Payments, Taxes and Duties

- (a) Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of the following: (i) Smiths' receipt of the Seller's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. Smiths shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.

- (b) Payment shall be deemed to have been made as of the date of mailing Smiths' payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable national and local taxes, goods and services taxes, sales taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

6. New Materials

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

7. Extras

Work shall not be supplied in excess of quantities specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

8. Changes

- (a) The Smiths Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, performance, or point of delivery; (iv) delivery schedule; (v) description of services to be performed; and (vi) time of performance (i.e., hours of the day, days of the week, etc.). Changes may only be made in writing by the Smiths Procurement Representative.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Smiths shall make, upon Seller's request, an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly.
- (c) Any claim for an equitable adjustment by Seller must be submitted in writing to Smiths within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. Smiths may audit any of Seller's books and records in connection with any equitable adjustment proposal.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

9. Engineering Changes ("ECs"); Product Discontinuation

ECs may be initiated by Seller under the following conditions:

- (a) Seller shall give advance notice to Smiths on an Engineering Change Order (ECO) summary sheet of any EC which effects form, fit or function proposed by Seller. No EC shall be implemented without Smiths' prior written consent, which may be withheld in Smiths' sole discretion; however Smiths agrees to act in good faith in exercising of this discretion.
- (b) Seller shall provide a written assessment of the anticipated effects of any EC on Smiths' schedule and manufacturing costs (including costs associated with scrap and rework), within five (5) business days. Seller and Smiths shall negotiate in good faith the costs associated with processing and implementing the EC.
- (c) In the event Seller discontinues the sale of any items purchased under this agreement by Smiths, Seller shall inform Smiths in writing no later than sixty (60) days prior to discontinuing sale of said item(s). Smiths shall then have first right to purchase all or a portion of Seller's remaining available inventory at the agreed contracted pricing.

10. Packing and Shipment

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Smiths Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

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- (c) Unless otherwise specified on the face of this Contract, delivery shall be effected DDP to Smiths nominated place of business (Incoterms 2010) in the quantities and on the dates set out in the Contract. Where the quantities and/or delivery schedules are not specified in the Contract, the Seller shall deliver the Works in such quantities and times as Smiths may direct in subsequent written correspondence.
- (d) Unless otherwise agreed in writing with the Smiths Procurement Representative, deliveries shall only be accepted by Smiths in normal business hours.
- (e) Where Smiths agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle Smiths at its option to treat the whole Contract as repudiated.

11. Inspection and Acceptance

- (a) Notwithstanding (i) payment; (ii) passage of title; (iii) prior inspection or test, or (iv) execution of an acceptance document, Smiths and its customer may inspect all Work prior to acceptance or rejection at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. Smiths' final inspection and acceptance shall be at destination unless otherwise designated by Smiths.
- (c) Seller shall provide and maintain a test and inspection system acceptable to Smiths and its customers, if required.
- (d) If Seller delivers non-conforming Work, Smiths may, at its sole option: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work and require the Seller to repair or replace the non-conforming Work at the Seller's sole cost and expense; (iii) refuse to accept any further deliveries of Work or any part thereof without any liability to the Seller; and/or (iv) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements. Seller shall be liable to Smiths for any cost Smiths incurred to ensure such compliance.
- (e) If Smiths chooses to reject the Work, the Work will be returned at Seller's cost and all transport costs will be debited to Seller.
- (f) Seller shall not re-tender rejected Work without disclosing the corrective action taken.

12. Transfer of Title and Risk of Loss

- (a) Title to and property in the Works shall pass to Smiths upon delivery provided that Smiths may decline to accept ownership of Works delivered or provided earlier than the agreed delivery dates.
- (b) All risk in the Works shall be with the Seller until ownership has passed and the Seller will insure the Works and indemnify Smiths in respect of any claim relating thereto up to the time of passing of ownership.

13. Warranty

Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. Seller further warrants and implies that the Work performed hereunder is of satisfactory quality, merchantable and fit in all respects for the purpose for which they are intended to be used by Smiths. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or one (1) year, whichever is longer. If any non-conformity of the Work appears within that time, Seller, at Smiths' option, shall promptly repair, replace, or re-perform the Work and hold Smiths harmless from any loss, damage or expense that Smiths may suffer from the breach of this warranty. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense. If repair or replacement or re-performance of Work is not timely, Smiths may elect to return the non-conforming Work or repair or replace Work or re-procure the Work at Seller's expense. All warranties shall run to the benefit of Smiths and its customers. At all times during the performance

of this Contract, Smiths shall have the right to inspect Work performed by Seller.

14. Quality Control System

- (a) Seller shall provide and maintain a quality control system in accordance with ISO 9001:2008 or an equivalent industry recognized quality standard approved by Smiths and in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by Seller shall be kept complete and available to Smiths and its customers.

15. Furnished Property

- (a) Smiths may provide to Seller property owned by either Smiths or its customer (Furnished Property), which may include, but not be limited to tooling, dies, patterns, samples or other equipment. Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall at all times remain with Smiths or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership and store the Furnished Property separately from its own inventory.
- (c) Except for reasonable wear and tear, Seller shall be responsible for, indemnify Smiths, and promptly notify Smiths of any loss or damage to the Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At Smiths' request, and/or upon completion of this Contract the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Smiths.
- (e) Material made in accordance with Smiths' specifications and drawings shall not be furnished or quoted to any other person or concern without Smiths' written consent.
- (f) The Seller shall immediately relinquish possession of any Furnished Property on demand in writing from Smiths.

16. Timely Performance

- (a) Seller's timely performance is a fundamental term of this Contract. Time of Seller's performance is of the essence.
- (b) Unless advance shipment has been authorized in writing by Smiths, Smiths may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify Smiths, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Smiths.

17. Stop Work Order

- (a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Smiths, or for such longer period of time as the Parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.
- (b) Within such period, Smiths shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

18. Compliance with Laws and Code of Business Ethics

- (a) Seller shall comply with all applicable laws, orders, rules, regulations and ordinances.
- (b) Smiths is committed to conducting its business ethically and lawfully.

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Smiths expects that the Seller also will conduct its business ethically and lawfully. Smiths' Code of Business Ethics and Smiths' Supplier Code of Business Ethics establish minimum standards for ethical conduct. These Codes are available at <http://www.smiths.com/responsibility-code-of-business-ethics.aspx>. By the acceptance of this Contract, Seller represents that it has not participated in any conduct in connection with this Contract that violates the Smiths Code of Business Ethics or, alternatively, equivalent business ethics and conduct standards of the Seller. If, at any time, Smiths determines that Seller is in violation of the applicable standards of business ethics, Smiths may cancel this Contract and any other contract with Seller upon written notice to Seller and Smiths shall have no further obligation to Seller. Smiths reserves the right to conduct enquiries and investigations into the Seller's conduct to satisfy itself that these minimum standards are being met.

- (c) By submitting its written offer or accepting this Contract Seller certifies that to the best of its knowledge and belief, that Seller and/or any of its directors or officers are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by the Government. Seller shall provide immediate written notice to Smiths if at any time it learns that its certification was erroneous or has become erroneous by reason of changed circumstances.

19. No Gratuities / Kickbacks

No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Smiths with a view toward securing favorable treatment as a supplier.

20. Export / Import Control

- (a) Seller agrees to comply with all applicable export and import control laws and regulations of Seller's country, the United Kingdom, Canada, the United States, and all other applicable export or import authorizations and their provisos. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an Export License or applicable license exemption or exception.
- (b) Seller shall provide to Smiths all information necessary to support any export or import authorization requirements by Smiths for items ordered hereunder.
- (c) Seller shall indemnify Smiths for all liabilities, penalties, losses, damages, costs or expenses, including attorney fees that may be imposed on or incurred by Smiths in connection with any violations of such law and regulations by Seller.

21. Termination for Default

- (a) Smiths, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have five (5) days (or such longer period as Smiths may authorise in writing) to remedy a breach after receipt of notice from Smiths, where such breach is deemed by Smiths to be capable of remedy. Default involving delivery schedule delays shall be deemed a material breach not capable of remedy.
- (b) Smiths shall not be liable for any Work not accepted; however, Smiths may require Seller to deliver to Smiths any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. Smiths and Seller shall agree on the amount of payment for these other deliverables.
- (c) In the event of termination, in whole or in part, Smiths may acquire, under terms Smiths considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to Smiths for any excess costs of those supplies or services, including any incidental costs Smiths incurs through re-procurement.
- (d) Seller shall continue all Work not terminated.
- (e) If after termination under paragraph (a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.

22. Termination for Convenience

- (a) For specially performed Work: Smiths may terminate all or part of this Contract for its convenience by giving written notice to Seller. Smiths' only obligation shall be to pay Seller a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Smiths, using generally accepted accounting principles, have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided. Smiths may audit any of Seller's books and records in connection with any termination claim.
- (b) In no event shall Smiths be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (c) For other than specially performed Work: Smiths may terminate part or all of this Contract for its convenience by giving written notice to Seller and Smiths' only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge.
- (d) In either case, Seller shall continue all Work not terminated.

23. Termination for Insolvency

- (a) Without prejudice to its other rights or remedies, Smiths may terminate this Contract (in whole or in part) with immediate effect by giving written notice to the Seller if: (i) the Seller stops or suspends its business or payment of its debts or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or otherwise becomes insolvent or (being a partnership) suffers bankruptcy orders being made against any one of its partners; (ii) an administrator, administrative receiver, receiver or manager, liquidator or other similar officer is appointed in respect of the Seller or a notice of intention to appoint an administrator in respect of the Seller is given; (iii) a winding up order or bankruptcy order is made against the Seller or the Seller passes a resolution or makes a determination for it to be wound up; (iv) a judgment, order or award made against the Seller is outstanding and not discharged within 10 days or any distress, execution, sequestration or similar process is levied on or commenced against any of the assets of the Seller and not lifted, withdrawn or discharged within 10 days; (v) any arrangement, compromise or composition of the Seller's debts is proposed or made by or with the Seller; (vi) any event occurs in relation to the Seller in any jurisdiction in which it is incorporated, resident or carries on business which is analogous to any of those stated in (i) to (v) above; or (vii) there is a change of control of the Seller, "control" having the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (b) Where this Contract is terminated by Smiths pursuant to clause 23(a), Smiths exclusive liability to the Seller shall be to pay sums due under this Contract in respect of Work properly provided up to the date of termination.

24. Limitation of Smiths Liability

Smiths shall not be liable for any indirect damages including incidental, consequential, punitive, or exemplary damages, or for lost or anticipated revenue or profits.

25. Insurance

The Seller shall effect and maintain with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions. The Seller shall produce to the Smiths Procurement Representative, on request, copies of the relevant policy or policies or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. The terms of any insurance or the amount of cover shall not relieve the Seller of any liabilities under this Contract. It shall be the responsibility of the Seller to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy its liabilities under this Contract.

26. Indemnification

- (a) Seller shall indemnify and hold harmless Smiths, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage, death or personal injury, or any loss to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or

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subcontractors.

- (b) Seller shall without limitation as to time indemnify and hold Smiths harmless from all claims which may be asserted against property covered hereunder, and from all claims from injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Smiths' negligence.
- (c) Seller does hereby irrevocably indemnify and agree to defend any claim or litigation, or to pay or reimburse any judgment and all loss and expense costs (including reasonable attorney fees) incurred in connection with any claim or litigation which asserts or is based upon any alleged design or manufacturing defect, negligence, failure to warn, or breach of warranty related to Seller's product(s) (including parts and components thereof purchased by Seller from its suppliers), delivered to Smiths, or breach of, or non-compliance with, any provision of this Contract.
- (d) Seller warrants materials furnished pursuant to this Contract shall be free from asbestos containing materials.
- (e) Seller agrees to indemnify, save harmless and defend Smiths and its directors, officers, employees, agents, successors, affiliates and assigns from and against any and all liabilities, claims, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defence, settlement, and reasonable attorney's fees) which it or they may hereafter incur, become responsible for, or pay out as a result of, or arising out of, Seller's breach of any of its duties addressed in this clause. Seller shall include this clause in all subcontracts at any tier, involving the performance of this Contract.

27. Information of Smiths

- (a) All information, including but not limited to technical and business information, provided by Smiths to Seller remains the property of Smiths. Seller agrees to comply with the terms of any Non-Disclosure Agreement in place with Smiths and to comply with all markings and restrictive legends designating the information as confidential or proprietary applied by Smiths to anything provided hereunder to Seller. **Seller agrees not to use any Smiths provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Smiths.**
- (b) The Seller agrees to comply with all applicable security laws and regulations for the handling of classified information.

28. Information of Seller

Seller shall not provide any proprietary information to Smiths without prior execution by Smiths of a Non-Disclosure Agreement, Confidentiality Agreement or equivalent document or amendment to this Contract providing for the same.

29. Release of Information

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of Smiths.

30. Intellectual Property

Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

- (a) Seller agrees that Smiths shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Smiths, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Smiths' request and expense, all documentation necessary to perfect title therein in Smiths. Seller agrees that it will maintain and disclose to Smiths written records of, and otherwise provide Smiths with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Smiths and subject to the protection provisions of the clause entitled "Information of Smiths". Seller agrees to

assist Smiths, at Smiths' request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause. The Seller agrees and will procure that its sub-contractors agree to waive the exercise against Smiths of all moral rights under the Copyright, Designs and Patents Act 1988.

- (b) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United Kingdom, Canada, the United States or any other country. Seller agrees to defend, indemnify and hold harmless Smiths and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. Smiths may be represented by and actively participate through its own counsel in any such legal proceedings if so desired by Smiths and the cost of such representation shall be borne by the Seller.

31. Right of Set-Off

Smiths may (without limiting any other rights or remedies it may have) set off in part or in full any payments due to the Seller under this Contract against any amounts due from the Seller to Smiths under this Contract or any other Contract in place between the Seller and Smiths. Smiths reserves the right to withhold payment of any invoice in respect of (i) the suspension of any performance of any Work by the Seller or (ii) any Work which do not comply with the terms of this Contract.

32. Disputes

- (a) In the event a dispute arises under or relates to this Contract, the parties shall diligently attempt to resolve the dispute within 30 days from the date either party gives written notice to the other of its intent to invoke this provision, during which period neither party may commence legal action to assert its rights against the other. In the event the parties do not resolve the dispute within the 30-day period referenced above, either party may institute legal action to pursue any right or remedy it may have against the other party. The parties hereby submit to the exclusive jurisdiction of the English courts; provided however, that Smiths shall be entitled at any time to seek injunctive or any other equitable relief upon any breach or threatened breach by Seller in any court of competent jurisdiction.
- (b) The Seller's obligation to provide the Work shall not be affected by the dispute resolution procedure set out in this clause.

33. Independent Contractor Relationship

- (a) Seller is an independent contractor in all its operations and activities hereunder.
- (b) The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Smiths. This Contract is not a contract of employment or contract of service with the Seller or any employee of the Seller. Accordingly the Supplier shall be fully responsible for and shall indemnify Smiths for and in respect of: (i) all matters relating to the engagement or employment of the Seller's personnel including terms of employment or engagement, benefits, health and safety, pay, income tax and National Insurance and Social Security contributions and any other liability, assessment or claim relating to taxation (other than VAT relating to the provision of the Work) arising from or made in connection with the performance by the Seller of its obligations under this Contract.

34. Notices

- (a) Except as otherwise expressly provided, any notice or other communication from any party (the "Sender") to the other party (the "Recipient") which is required to be served or given under this Contract (a "Notice") must be in writing and signed by or on behalf of the Sender, addressed for the attention of, in the case of Smiths, the Smiths Procurement Representative, or in the case of the Seller, the Managing Director (or such other representative notified in writing from time to time).
- (b) The Sender may either: (i) deliver the Notice by hand (retaining satisfactory proof of delivery); (ii) send the Notice by recorded delivery or registered post (retaining a receipt of posting); (iii) send the Notice by registered airmail if it is to be served by post outside the country from which it is sent

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(retaining a receipt of posting); or (iv) send the Notice by e-mail (retaining an e-mail confirming delivery excluding an automatically generated e-mail receipt).

- (c) Any Notice shall be deemed to have been served: (i) if delivered by hand, at the time and date of delivery (or if delivered after 4pm local time, on the next Working Day); (ii) if sent by e-mail, when the sender receives a reply e-mail confirming delivery (excluding an automatically generated e-mail receipt); (iii) if sent by recorded delivery or registered post, two Working Days after the date of posting (such date as evidenced by a receipt of posting); or (iv) if sent by registered airmail, five Working Days after the date of posting (such date as evidenced by a receipt of posting).

Save for any subsidiary or affiliate of Smiths, a person who is not a party to these terms and conditions shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

35. Subcontracting

The Seller shall only be permitted to sub-contract its obligations under this Contract with the prior written consent of Smiths. Sub-contracting any part of the Contract shall not relieve the Seller of any of its obligations or duties under the Contract. Seller shall be responsible for any costs or expenses including legal and attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

36. Entire Agreement

This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

37. Assignment

Any assignment of Seller's contract rights or delegation of duties shall be void, unless prior written consent is given by Smiths. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Smiths is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Smiths against Seller. Smiths shall have the right to make settlements and/or adjustments in price without notice to the assignee.

38. Severability

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

39. Survival of Obligations

If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions: Applicable Laws; Export/Import Control; Indemnification; Intellectual Property; Release of Information; and Warranty

40. No Waiver

Failure by Smiths to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of Smiths thereafter to enforce each and every such provision(s). Smiths' approval of documents shall not relieve Seller from complying with any requirements of this Contract.

41. Remedies

The rights and remedies of Smiths in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

42. Applicable Law

This Contract (including any non-contractual obligations arising from it) shall be governed by and construed in accordance with the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

43. Contracts (Rights Of Third Parties) Act 1999