1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 the following terms have the following meanings:

"Affiliate" any persons that Control, are Controlled by or are under common control with us from time to time;

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

"Claims" claims or proceedings made, brought or threatened against us by any person;

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

"Contract" a contract for the supply of Deliverables by you to us or incorporating these Conditions, including pursuant to a Framework Agreement, as formed under Condition 2.1;

"Control" in relation to a person, the power to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and "Controlled" is construed accordingly;

"Deliverables" means Goods, Work Product and/or Services;

"Delivery" delivery of the Goods in accordance with Condition 4;

"Framework Agreement" a framework agreement in place between us and you for the supply of Deliverables incorporating these Conditions;

"Goods" the goods set out in the Order or any Specification or referred to in the Framework Agreement;

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

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

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

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

"Order" our written acceptance of your offer for the supply of Deliverables to us AND/OR any purchase order form submitted by us to you for Deliverables;

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

"Services" the services set out in the Order or any Specification or referred to in the Framework Agreement;

"Specification" the specifications and requirements for the Deliverables set out in the Order or as defined in the Framework Agreement;

"we" or "us" or "our" the person named as the supplier in the Order and/or referred to as "Customer" in a Framework Agreement;

"Work Product" any reports, documents, work product or other materials created for you, or on your behalf, arising from a Services;

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

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

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

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

1.5 an obligation on a party to procure or make sure the performance or standing of another person will be construed as a primary obligation of that party;

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

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1.6 will be construed without limitation and accordingly will not limit the meaning of an obligation on a party to procure or make sure the performance or standing of another person.

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1.7 The English language version of these Conditions will be binding upon you and us. Any translation has been prepared for convenience only. In the event of any conflict, ambiguity or inconsistency between the English language version of these Conditions and any translated version, the English language version shall prevail.

2. CONTRACT FORMATION

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

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

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

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

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

3. QUALITY CONTROL & TESTING

3.1 The quantity, description and Specification of Deliverables will be as set out in the Order. You must make no Change to Deliverables without our prior written consent. You will carry out any reasonable Change that we request to any Deliverables. We will negotiate in good faith, with you an agreed adjustment to the price, Delivery date or both as a result of a Change.

3.2 You will maintain detailed quality control and manufacturing records for the shorter of any maximum period permitted by law and 10 years from the date of Delivery (or such other period of time as set out in a Framework Agreement or Order), which we or a third party on our behalf may inspect or receive copies of on demand.

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

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

3.5 You may not deliver the Goods by separate instalments without our prior written consent. Instalments will be invoiced separately by you.
to the Goods that have not been delivered and indemnify us and our Affiliates against our Losses as a result of your failure to supply Goods, including obtaining substitute goods from another supplier.

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

4.8 Risk in the Goods passes to us on the later of acceptance and Delivery. Ownership of the Goods passes to us on the earlier of payment of the Price and Delivery.

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

5. YOUR OBLIGATIONS

5.1 You will make sure that the Goods will:

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

5.1.2 confirm to, and be capable of the Specifications;

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

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

5.1.5 comply with all (i) applicable laws, (ii) regulatory requirements and (iii) standards and requirements of relevant statutory and regulatory bodies; and

5.1.6 be safe and without risk to health.

5.2 In respect of Services, You will:

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4.5 at your expense, repair or have a third party repair the Goods or reperform or have a third party reperform the Services and you will indemnify us and our Affiliates against our Losses (including from a result of any such campaign).

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

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

6. OUR PROPERTY

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

6.2 You will insure against all risks any Tooling and also any of your own tooling or property which may be kept on our premises for the purposes of providing Deliverables. You will keep all Tooling safe and in good condition while in your custody and under
7. ASSIGNMENT OF IPR

7.1 This Condition 7 will apply if the Goods are to be made, modified or redesigned to our Specification. Any bespoke Specification or Work Product you create or have created for our Affiliates and our and their end customers a non-exclusive, non-transferable, royalty-free license to use and exploit in any and all forms and formats, without restriction, the Deliverables, at our and their sole cost. You grant (and, where applicable, will ensure that your suppliers will) a non-transferable, non-exclusive, non-sublicensable license to our and our Affiliates to use and exploit the Deliverables, at our and their sole cost.

7.2 You will assign to us (or any assignee of us) in consideration of a sum no less than the then current fair market value of the goods and services supplied, all right, title and interest in the Goods and in the Goods at any stage of development or production, and in any copyright, patent, trade mark or other similar right in the Goods and in any work of authorship, and in any database or server or estate or profit and the like, which we may have or acquire whether for its use and benefit or its disposal or resale.

7.3 You will:

7.3.1 assign to us all IPR in the Goods which subsist at the date of the Contract;
7.3.2 assign to us (by way of present assignment of future copyright) all copyright subsisting in the Goods immediately after the date of the Contract; and
7.3.3 grant (and, where applicable, will ensure that your suppliers will) a non-transferable, non-exclusive, non-sublicensable license to our and our Affiliates and their end customers to use all right, title and interest in the Goods which subsist as at the date of the Contract in any manner and for any purpose.

8. PRICE AND PAYMENT

8.1 As long as your obligations under this Contract are performed, you will pay us the amounts specified in the Contract.

8.2 We will be responsible for the cost of packing, carriage, insurance, duties and delivery costs.

8.3 Any payment due under the Contract is exclusive of any expenses incurred by you, including all costs and expenses incurred by you in connection with the supply of the Deliverables.

8.4 You must invoice us for the price of the Goods as soon as practicable after delivery, and within 30 days of the delivery date.

8.5 We will pay you the price of the Goods within 30 days of receipt of your invoice.

8.6 We reserve the right to terminate the Contract if you fail to perform your obligations under this Contract.

8.7 We reserve the right to terminate the Contract if you fail to pay the amount due under this Contract on the due date.

8.8 We reserve the right to terminate the Contract if you fail to perform your obligations under this Contract.

8.9 We reserve the right to terminate the Contract if you fail to pay the amount due under this Contract on the due date.
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9.3 Following expiry or termination of the Contract:
9.3.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
9.3.2 all other rights and obligations will immediately stop but will not affect any of your or our rights, obligations, claims and liabilities which may exist prior to the date of expiry or termination; and
9.3.3 each party will immediately stop using the other party’s Confidential Information and will as soon as reasonably possible, if requested to do so, return to the other party all of the other party’s Confidential Information (including all copies and extracts) in its possession or control or confirm its secure destruction; and
9.3.4 each party may keep any of the other party’s Confidential Information which it has to keep to comply with any applicable law and Condition 9.3.3 will not apply to such Confidential Information.

Condition 11 will continue to apply to retained Confidential Information.

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

10. LIABILITY AND INSURANCE

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

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

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

10.3.1 for death or personal injury resulting from its negligence;
10.3.2 for any fraud or fraudulent misrepresentation;
10.3.3 for any matter for which it is not permitted by law to exclude or limit its Liability.

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

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

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

11. CONFIDENTIALITY

11.1 Except as set out in Condition 11.2, each party will:
11.1.1 only use the other party’s Confidential Information for the purpose of performing its obligations and exercising its rights under the Contract;
11.1.2 keep the other party’s Confidential Information secret, safe and secure; and
11.1.3 not disclose the other party’s Confidential Information to any other person.

11.2 Each party may disclose the other party’s Confidential Information:
11.2.1 to the extent required by law, any court of competent jurisdiction or the rules of any government, public or regulatory body or any stock exchange; and
11.2.2 to its officers, directors, employees and professional advisors and, in our case, our Affiliates, agents, sub-contractors and sub-suppliers, who need the Confidential Information in order for that party to perform its obligations and exercise its rights under the Contract. A party disclosing the other party’s Confidential Information under Condition 11.2.2 will make sure that each person to whom it discloses that Confidential Information is bound by obligations of confidentiality no less onerous than those set out in this Condition 11.

11.3 Each party acknowledges and agrees that damages alone would not be an adequate remedy for breach of Condition 11.1 by that party. Accordingly, the other party will be entitled, without having to prove special damages, to injunctive relief, equitable relief and/or specific performance for any breach or threatened breach of Condition 11 by the first party.

12. ETHICAL CONDUCT

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

12.2 You represent and warrant that you and your subcontractors and suppliers do not use or permit unacceptable labour practices, such as child or forced labour, or unsafe working conditions and comply with all applicable labour and employment laws, regulations, standards and conventions, including the UN’s Guiding Principles on Business & Human Rights and the International Labor Organization’s Conventions and any similar or equivalent laws applying in the jurisdiction in which we are registered.

12.3 You hereby acknowledge that you are aware of, and agree to comply with all applicable anti-bribery and anti-corruption laws, including but not limited to the Foreign Corrupt Practices Act (FCPA) (and related regulation and guidance) and any similar or equivalent laws applying in the jurisdiction in which we are registered.

12.4 You represent and warrant that you only supply minerals to us and our Affiliates from sources that do not (i) contribute to conflict; and/or (ii) benefit or finance armed groups in the Democratic Republic of Congo or any adjoining country. You have adopted, and notify us immediately upon the occurrence of any such event or circumstance.

12.5 We have adopted, and we will continue to adopt, the conflict minerals policies of the Extractive Industries Transparency Initiative (EITI) and the Conflict-free Minerals Certification System (CFCCS) to ensure that we source our conflict-free minerals.

12.6 You have adopted, and we will continue to adopt, the conflict minerals policies of the Extractive Industries Transparency Initiative (EITI) and the Conflict-free Minerals Certification System (CFCCS) to ensure that we source our conflict-free minerals.
require your suppliers of minerals to adopt, conflict mineral policies and management systems.

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

13. NOTICE

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

14. EXPORT / IMPORT / ECONOMIC SANCTIONS CONTROLS

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

14.2 You will provide to us all information necessary to support any regulatory or government authorization requirements we have regarding the Goods.

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

15. GENERAL

15.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and, subject to Condition 10.3, neither party has entered into the Contract in reliance upon it, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in the Contract.

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

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

15.4 Except to the extent otherwise specified in these Conditions, variations to the Contract must be agreed in writing and signed by both parties.

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

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

15.7 Each of our Affiliates will be entitled to enforce in its own capacity the terms of any Contract under which that Affiliate receives a benefit.

15.8 Save as provided in Condition 15.7, the parties do not intend that any term of a Contract will be enforceable by any person who is not a party to it.

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

16. GOVERNING LAW AND JURISDICTION

16.1 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

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