



Horstman Defence Systems Ltd.  
Locksbrook Road,  
Bath,  
BA1 3EX

## Horstman Defence Systems Limited

# Standard Terms and Conditions of Purchase

Document Details HDS F155

Issue: 1

Revision: 7

Date: 31/08/2017

### List of Revisions

Revision	Description	Name	Date
1.2	Addition of 5 E(ii), AS9100 Rights of Access clause	John Ridd	05/09/2014
1.3	Addition of 5 B, Weight and size of standard delivery.	John Ridd	04/11/2014
1.4	Addition of 6A statement relating to Supply of Counterfeit Goods	John Ridd	29/10/2015
1.5	Addition of 6A statement relating to Supply of Counterfeit Goods	John Ridd	22/12/2016
1.6	Addition of 6D statement relating to Modern Slavery Act regulations  Removed and placed into SQR01 31/08/2017 Ref S Ellis.	John Ridd	27/03/2017
1.7	Adjustment in-line with the requirement of AS9100:2016	John Ridd	31/08/2017

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### STANDARD TERMS AND CONDITIONS OF PURCHASE

#### 1. Definitions

“Additional Terms” are any specific terms specified on the Purchase Order or attached to it which apply in addition to these Conditions of Purchase.

“Business Day” means any day (other than Saturday) on which clearing banks are open for normal banking business in Sterling in the City of London.

“Insolvency Event” means any one or more of (1) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed (2) a petition for winding up or an administration or bankruptcy order being presented, or such an order being made; (3) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness (4) suspension of payments to all or any creditors; (5) an encumbrancer taking possession of all or any assets of the Supplier; (6) an administrator or receiver being appointed over the Supplier or all or any of its assets; (7) any action anywhere similar or analogous to any of the foregoing; (8) the Supplier ceases, or threatens to cease to carry on business; (9) the Company has reasonable grounds for believing that any of the foregoing is imminent; For the avoidance of doubt if any of the foregoing occur in relation to a partner in the Supplier hereto it shall be deemed to occur in relation to the Supplier.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“NDA” means the Non Disclosure Agreement signed by the Supplier and the Company.

“Pre Existing IPR” means any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Supplier of its obligations under the Contract.

“Price” means the price for the Goods as set out in the Purchase Order or notified under condition 2(h).

“Purchase Order” means the properly signed, printed and numbered order form issued by the Company.

“RPO” means a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions.

“Specification” means the Buyer’s specification including any drawings provided by the Buyer.

“Supplier” means the person, firm or company to whom the Purchase Order is addressed.

“The Company” is Horstman Defence Systems Limited.

“The Goods” means the goods or work and materials, or services specified in the Purchase Order.

“Quality Conditions” means the Company’s quality conditions SQR01 which are available on request.

#### 2. Formation of contract issue of Order and acceptance

(a) The Contract comprises an offer by the Company to purchase the Goods subject to the provisions of the Purchase Order, these Conditions, the NDA, the Quality Conditions, the Additional Terms.

(b) No variation to the Contract shall be binding unless agreed in writing between the authorised representative of the Company and the Supplier.

(c) If the Order provides that Goods are purchased on any trade term defined in the current edition of Incoterms the use of the same shall import the obligations there provided upon the buyer and supplier respectively as buyer and seller.

(d) No document or statement which might otherwise be capable of constituting a variation of the purchase Order or a counter-offer by the Supplier shall bind the Company.

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(e) Without prejudice to any other mode of acceptance the commencement of any work on or connected with the Goods (including work in connection with samples and tooling) will comprise acceptance by the Supplier of the Purchase Order on the Conditions of Purchase

(f) The Price of the Goods shall be fixed and as stated in the Purchase Order and, unless otherwise so stated, shall be (1) exclusive of any applicable value added tax which shall be payable by the Company (subject to receipt of a VAT invoice) at the rate prevailing at the relevant point; and (2) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the address for delivery as shown on the Purchase Order and any duties, imposts or levies other than value added tax and other costs and expenses incurred by the Supplier unless set out on the Purchase Order.

(g) No increase in the Price may be made (whether on account of increased material, labour or transport costs, other expenses, fluctuation in rates of exchange or otherwise) without the prior consent of the Company in writing.

(h) If the Price is calculable but not given as monetary amount the Supplier will notify the Finance Director of the Buyer of the agreed monetary amount as soon as possible after receipt of the Purchase Order, or must be prepared to accept delay in payment.

### 3. Systems Documents

(a) Delivery Note. All goods shall be accompanied by a detailed delivery note stating the Purchase Order number, the date and number of any relevant delivery schedule, and giving identification particulars of any goods supplied, including the Company's part-number, drawing number or specification number and the issue and/or modification letters or numbers where these are known to the Supplier.

(b) Invoice. The invoice shall state the Purchase Order number. The part number, the delivery note number and the date and number of any relevant delivery schedule shall be stated if any have been quoted to the Supplier. Otherwise a sufficiently detailed description to enable the Goods to be identified shall be given. Where any charge is made for Value Added Tax, the invoice shall be in the form as laid down from time to time by H.M. Revenue and Customs and/or any other relevant authority for Value Added Tax purposes.

(c) Monthly Statement: Any monthly statement of account must list the Invoices to which it relates and must be sent to the address of the Company.

(d) Advice Note: On despatch the Supplier shall send to the Company by separate post an advice note stating every carrier employed to transport the Goods and all the matters stated on the delivery note.

(e) No document sent by the Supplier will be considered by the Company to be relevant to the Purchase Order unless the appropriate Purchase Order number is quoted.

### 4. Variations

(a) The Company shall be entitled to regulate the rate of delivery or performance of the Goods by means of delivery schedules.

(b) The Company reserves the right by written notice to require changes in:-

(i) the designs and/or the Specifications applicable of the Goods covered by the Purchase Order.

(ii) the method of shipment and packing.

(iii) the place of delivery.

(c) If any such changes affect the time for performance or the Price, the Supplier shall immediately so notify the Company of the effect of such variation and if the Price would be increased shall provide a detailed explanation and proof of such increase. The Supplier shall use its best endeavours to keep any increase in cost to a minimum. The Company shall if appropriate make an equitable adjustment to the delivery schedule. No change in the Price shall be made without the prior written consent of the Company.

(d) The Supplier shall not make any changes in the design or composition of any Goods without the Company's prior written consent.

(e) Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control ("Force Majeure Event") save that if such Force Majeure Event continues for more than 1 month the Company shall be entitled to cancel, extend, suspend and/or vary the Purchase Order or any part of it, without any liability to the Supplier save that the Company will pay only for Goods and work in progress actually accepted by it.

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### 5. Operation

(a) Payment will be made only after an invoice and a monthly statement have been received from the Supplier and the Goods accepted as stated in 5d. If the Company does not pay invoices by the due date and has not disputed the invoice, the Supplier shall notify the Company in writing giving the Company a further 30 days to pay the relevant invoice. If the Company has not paid the invoice by the end of such 30 day period, the Supplier shall so notify the Company and the Supplier shall be entitled to charge interest on all sums unpaid by their due date at the rate of 2% per annum above the base rate for the time being of Allied Irish Bank plc from the date on which payment was due up to and including the date of actual payment both before and after judgement.

(b) Containers and packing are to be supplied free of charge by the Supplier and will be returned by the Buyer if required by the Supplier at the Supplier's risk and expense.

Maximum delivery weight of each standard delivery pallet not to exceed 1 tonne, deliveries over this weight will only be accepted with prior agreement of the buyer.

Maximum delivery size to be a Euro Pallet, deliveries over this size will only be accepted with prior agreement of the buyer.

(c) Where the time of delivery of the Goods and/or of performance of the Services is specified it shall be of the essence of the Contract, and where no such time is specified, the Company may by 28 days notice to the Supplier make time of the essence as at the date fixed by such notice.

(d) The Company shall not be bound to accept and pay for any Goods unless the same are specified in and comply with a Purchase Order and the Company will not accept responsibility for the safe custody or protection of Goods left at its premises and the risk shall pass only when delivered to the address and in the place and manner specified in the Purchase Order and the signature of an authorised member of the Company's goods receiving department is obtained on a document quoting the number of a Purchase Order on the Conditions of Purchase. The Company will not accept Goods until it has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the Contract.

(e) (i) if required by the Company the Supplier shall submit samples for approval and the bulk of the Goods shall not be started until the Company has communicated its approval in writing. The Company may retain the samples until the whole of the Goods are delivered

(f) (i) All drawings, specifications, patterns, tools, free issue materials and documents or things supplied, or fully paid for by the Company ("Company Property") shall be identified as the Company's property and unless otherwise agreed in writing remain or become the property of the Company. All Company Property shall be returned to the Company in good condition immediately upon request and/or forthwith on completion of or termination of the Contract, and they, shall be treated by the Supplier as confidential and shall not be communicated to any other person nor used by the Supplier for any purpose other than in connection with the Purchase Order. Risk in such Company Property shall pass to the Supplier upon delivery to the Supplier or collection by the Supplier and shall remain with the Supplier until is returned to the Company or collected by the Company. The Supplier shall indemnify the Company in full against any and all loss and/or damage of or to Company Property. In addition, the Supplier shall ensure that all such tooling is maintained in good condition and shall replace any such tooling, or part thereof, lost or damaged and shall adequately insure against loss or damage thereof. The Supplier waives any lien which it might otherwise have whether at the date hereof or subsequently on any Company Property for work done thereon or otherwise. This paragraph shall not be construed as a waiver of any other right of recovery of any other charges that may be due to the Supplier of such work.

(ii) The Supplier will not without the prior written authority of the Company sell, hire, use or otherwise dispose of to or for any other person, any Goods manufactured by the Supplier to the Company's designs, drawings or specifications or based upon them, or any tooling designed for use in their manufacture and the Supplier shall refer to the company all enquiries received for such Goods or tools.

(iii) The Company shall have an option which shall be exercised by written notice to pay not more than the balance of the replacement cost for the outright ownership of any materials, samples jigs patterns, tooling or any other item necessary to the manufacture of the Goods to a design, drawing or specification supplied by the Company. At the request and cost of the Company the Supplier shall deliver any such item to the Company at

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such place and time as the Company shall stipulate. Within 30 days of receipt of the option notice the Supplier will notify the Company of the amount claimed as the said unrecovered balance and the Company will within 1 month pay the amount agreed or if it is not the agreed amount fixed by an independent Chartered Accountant acting as an expert or other independent experts may be agreed.

(g) If the Goods have determinable shelf life, the Supplier shall advise the Company of the storage conditions recommended for the longest possible shelf life and the minimum duration thereof. (i) As required by the Health and Safety at Work etc., Act 1974 all Goods to be supplied must be designed, tested and constructed so as to be safe and without risks to health when used at work and all necessary information and instructions for the safe and proper use of the Goods must be supplied to the Company prior to delivery of the Goods. Any exemption from the foregoing must be requested in writing and must be specifically agreed to by a statement on the Purchase Order. In particular the Supplier must specify in his quotation or as soon as identified any operational or health risk which may arise during handling, storage, use or disposal after use, including known misuses of the Goods.

(h) VESTING - title to all raw materials, sub system components, part manufactured goods, work in progress will vest in the Company as soon as they are identifiable as forming part of the Goods to be delivered to the Company in pursuance of the contract.

(i) Articles supplied under this purchase order must not contain substances which have been classified as ozone depleting by the Montreal Protocol. This requirement also applies to the manufacturing process and any packing material.

(j) Seller agrees that all supplies and services herein ordered will be manufactured or performed and furnished in accordance with Federal Acquisition Regulation 52.225.13 Restrictions on Certain Foreign Purchases and will exclude any supply or service manufactured or performed in Burma , Cuba, Iran, North Korea or Sudan. The Seller agrees that they do not transact business with any entity or individual named on the US Government's Consolidated Screening List.

### 6. Supplier's Warranties

(a) The Supplier warrants to the Company that the Goods (1) will be of highest quality and fit for their normal purpose and any other purpose held out by or known to the Supplier in writing at the time the Purchase Order is placed; (2) will be free from defects in design, material and workmanship; (3) will correspond with any relevant Specification, quantities, stipulations or samples provided in the Contract; and (4) will comply with all applicable laws, standards, requirements and regulations relating to the sale and/or use of the Goods.

(b) The Supplier warrants to the Company that the Services (1) will be performed by appropriately qualified and trained personnel, with due care and diligence; (2) will be provided to such high standard of quality as it is reasonable for the Company to expect in all the circumstances; and (3) will comply with the Specification and be provided in accordance with all applicable law.

(c) Without prejudice to any other right or remedy the Company may have the Supplier shall indemnify the Company in full against all liability, loss including loss of profit, increased production costs, any loss as a result of failure of, stoppage of or interference with production, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- (i) breach of any warranty given by the Supplier in relation to the Goods and/or the Services;
- (ii) any claim that the Goods infringe, or their importation, use of resale, infringes the patent, copyright, database right, registered design, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification or drawing supplied by the Company; and
- (iii) any act or omission of the Supplier its employees, agents or sub-contractors in supplying, delivering and/or installing the Goods and/or in connection with the performance of any services.

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### 7. Breaches and Remedies

(a) Without prejudice to any other rights or remedies possessed by the Company it is entitled to recover damages for:-

(i) any delay in the Company's business due to late delivery by default of the Supplier from whatever cause including but not limited to rejection by the Company for non-compliance and subsequent sorting, alteration, repair or replacement.

(ii) non-delivery due to the fault of the Supplier

(b) Without prejudice to any other rights or remedies possessed by the Company, the Company shall be entitled to reject any Goods or a part of any Goods delivered to it if the same do not comply exactly with any drawings, specifications or instructions supplied or given by the Company or with any sample produced by the Supplier or if the Supplier is in breach of the Contract, but if the Company does accept any such Goods which it is entitled to reject it reserves the right to pay a reduced price for them. Rejected Goods may be returned by the Company at the Supplier's risk and expense.

(c) Where the Supplier delivers or the Company accepts a part of any Goods the Company shall be entitled to pay for the part of the Goods actually accepted and claim any applicable (See clause 7 (a) above).

(d) Where clause 2 (h) applies, where Goods or a part of Goods have been taken and used in the business of the Company and the Supplier has not notified the Company of any new agreed price, the Price payable shall be that specified on the Purchase Order, but if no price appears on the Purchase Order the Company reserves the right to pay a reasonable price calculated by reference to other prices paid to the Supplier for similar Goods.

(e) If the Supplier fails to accept and comply with any reasonable delivery schedule submitted by the Company the Supplier shall be deemed to be in breach of the Conditions of Purchase and shall pay to the Company as damages for the breach all costs and expenses incurred by the Company in particular but without prejudice to the generality of the foregoing all sums expended by the Company in securing alternative supplies of any or all the Goods (including any sum expended by reason of any increase in the price thereof) and any loss suffered by the Company as a result of delays in their production.

(f) The Company shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if (1) the Supplier commits a material breach of any provision of this Contract which it does not remedy (where remedy is possible) within a period of 30 days of receipt of a written notice from the Company specifying the breach and requiring remedy; or (2) an Insolvency Event occurs in respect of the Supplier.

(g) Termination of expiry of the Contract shall be without prejudice to the rights of either party against the other which may have accrued up to the date of termination or expiry.

(h) Any excess Goods delivered which are not accepted by the Company will remain at the Supplier's own risk and expense and the Company may at any time return the same to the Supplier at the Seller's risk and expense. The Company may notify the Supplier in writing of the price at which it would be willing to accept Goods in excess of the quantities specified in the Purchase Order and such notice shall not constitute acceptance of the Goods unless the Supplier agrees the price notified.

### 8. Intellectual Property

(a) The parties agree that all right, title and interest in any Intellectual Property Rights created by the Supplier and/or any subcontractor or agent of any of them or which arise in the course of fulfilling the Purchase Order ("Project Intellectual Property Rights") shall be owned by or vest in the Company and the Supplier hereby assigns all right, title and interest in and to the Project Intellectual Property Rights with full title guarantee to the Company. All such Project Intellectual Property Rights shall where the same is legally possible vest in the Company automatically upon their creation pursuant to the Copyright Designs and Patents Act 1988. [The Supplier shall waive or procure a waiver of any moral rights in any copyright works hereby assigned to the Company]. This assignment will take effect on the date of the Order or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Intellectual Property Rights as appropriate.

(b) If requested to do so by the Company the Supplier shall without charge execute all such deeds and documents and do all such further acts as may be necessary to vest all Project Intellectual Property Rights in the Company.

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(c) The Supplier hereby grants to the Company a non- exclusive, royalty free, transferable licence with the right to grant sub licences to use the Pre-Existing IPR but only to the extent necessary to be able to exercise its rights to use and exploit the Project Intellectual Property Rights.

### 9. Miscellaneous

(a) The Company hereby gives notice that the business of the Company is such that any defect in the goods and/or services which the Supplier supplies is liable to cause serious financial loss and/or physical injury.

(b) The Supplier shall maintain in full force and effect such insurance as is required by law and as would be maintained by an RPO operating in the same field as the Supplier. The Supplier shall produce the relevant policies and evidence of payment of premium from time to time upon request from the Company.

(c) The Supplier shall not advertise or publish the fact that it is or has become a supplier to the Company without the Company's prior written consent.

(d) Failure by the Company to enforce any of the Conditions of Purchase shall not be construed as a waiver of its rights hereunder.

(e) These Conditions and the Contract shall not constitute and shall not be deemed to constitute a partnership between the Company and the Supplier and the Supplier shall not act nor purport to act as agent for the Company but solely as an independent contractor.

(f) The Purchase Order is personal to the Supplier and the Supplier shall not assign transfer or charge its rights and responsibilities under the Contract or any of them without the prior written consent of the Buyer. Where the Supplier sub-contracts performance of any of its obligations it may only do so with the prior written consent of the Company and subject to acceptance by the Supplier of full liability in respect of any act or omission of the sub-contractor and in respect of insurance of the goods when under the control of the sub-contractor.

(g) The headings in these Conditions are for convenience only and do not affect its interpretation.

(h) The provisions of these Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.

(i) For the avoidance of doubt save as provided in these Conditions nothing in the Contract shall confer on any third party any benefit or the right to enforce any provision of the Contract.

### 10. Law and Jurisdiction

(a) These Conditions and any contract in which they are incorporated shall be governed in accordance with the laws of England and Wales. Any dispute arising under this Contract shall be subject to the exclusive jurisdiction of the English courts and the parties waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

(b) 'US International Traffic in Arms Regulations

You are instructed to notify Horstman Defence Systems Limited if any of the goods, technology, software or technical assistance, which are the subject of this document are controlled under the US International Traffic in Arms Regulations (ITAR). The following information is required: Description of material, Part / reference number, and US Munitions List Category.'

(c) Sub-licensees should contact Horstman Defence Systems for instruction on the disposal of ITAR controlled hardware

These commodities may not be disposed of without the written approval of the US Department of State and this control extends to part finished or scrapped goods.

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