

SMMT Industry Forum Standard Terms and Conditions of Contract for Services (“Conditions”)

1. **Interpretation**

In these Conditions:

 - a) "the Company" means the company or business to which IF shall provide services under and in accordance with the Proposal;
 - b) "the Contract" means the agreement between the Company and IF concluded by the Company's authorised signatory signing the Company's acceptance of the Proposal subject to these Conditions;
 - c) "BERR" means the Department for Business, Enterprise & Regulatory Reform;
 - d) "the Fee" means the price exclusive of Value Added Tax, payable to IF by the Company under the Proposal;
 - e) "IF" means the SMMT Industry Forum of 2410 Regents Court, The Crescent, Birmingham Business Park, Birmingham, B37 7YE and includes the "Working in Partnership" agreement between SMMT Industry Forum and the Society of British Aerospace Companies (SBAC).
 - f) the "IF Materials" means all documents belonging to IF and supplied to the Company in connection with the Contract, including but not limited to the "Common Approach Manual" or excerpts from it as appropriate and includes information in CD-ROM format or other non-printed media:
 - g) "loss" includes destruction;
 - h) "month" means calendar month;
 - i) "person" includes a corporation;
 - j) "the Proposal" means the letter as signed by the Company which details the supply of Services to be provided to the Company by IF subject to these Conditions;
 - k) "the Services" means the services to be supplied under the Proposal;
 2. **Performance**
 - a) Upon signing a copy of the Proposal, the Company accepts the provision of the Services by the IF engineers as specified in the Proposal and the Company shall grant IF, IF engineers and employees and agents all the information and access to files, records and access to all Company premises as the Company deems necessary to enable the performance of the Services.
 - b) IF shall use reasonable endeavours to ensure that the Services shall be performed according to the timetable contained in the Proposal or as may be varied by mutual consent.
 3. **Public Funding Compliance Requirements**

If the Contract is subsidised by BERR through IF BERR requires that the Company:-

 - a) warrants that it has provided IF with full details of all public funding provided to it in the last 3 years (to enable IF to establish that the Company does not breach the de minimis limit.)
 - b) must satisfy IF of the Company's financial viability, and will provide IF with data requested to allow that evaluation to be carried out.
 - c) acknowledges that IF is required to cascade the learning process, performance and improvements through IF activities including IF seminars, workshops, visits to the Company, and details of process improvement shall be collated and used by IF and BERR
 4. **Severability**

If any condition, clause or provision of these Conditions not being of a fundamental nature be held to be unlawful or unenforceable by a court in any proceedings, relating to the Conditions the validity or enforceability of the remainder of the Conditions shall not be affected thereby.
5. **Confidentiality**
 - a) Each of the parties is responsible for identifying any information including know how which it regards as being confidential or trade secret ("Confidential Information") before disclosure to the other party and each of the parties undertakes to the other to keep confidential Confidential Information except where:
 - i) the Confidential Information was already lawfully known, or became lawfully known to either of the parties independently of the performance of the Services;
 - ii) the Confidential Information is, or comes into, the public domain other than due to wrongful use or disclosure by the parties;
 - iii) disclosure or use is necessary by either of the parties for the proper and effective performance of the Services;
 - iv) the disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign) and their authorised agents (including professional advisers).
 - b) IF shall safeguard from loss or damage every document or thing supplied by or obtained from the Company for the purposes of the Proposal and shall protect every such document or thing from unauthorised use, disclosure or copying and shall forthwith upon or earlier if the Company shall request return to the Company in good and useable condition every such document and thing.
 - c) Each of the parties shall ensure that their respective employees, agents and sub-contractors shall comply with the requirements of this clause 5. The parties shall use the same standard of care in relation to the information as if it were Confidential Information of their own.
 6. **Amendments and Variations**

No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing between IF and the Company.
 7. **Payment and Charges**
 - a) The Fee specified in the Proposal shall be payable within 14 days of receipt of the invoice which shall state the period and amount of services for which payment is claimed.
 - b) We may (without prejudice to our other rights and remedies) charge you interest in respect of late payment of any such due under this agreement on a day to day basis (both before and after any judgement) at the rate of 4 per cent per annum above the base rate of Barclays Bank plc from the due date for payment to the actual date of payment (both dates inclusive). The interest shall be paid by you on demand.
 8. **Cancellation by the Company**

Notice of any cancellation or delay must be received in writing, at least 21 days prior to the commencement of the Services (a cancellation or delay fee of £100 +VAT will be incurred). Once within this period the Company shall be fully liable for the entire Fee.
 9. **Health and Safety**

The Company shall comply with statutory Health and Safety requirements and exchange information with IF as required by statute and the IF Health and Safety policy. IF reserves the right to refuse to work in an environment which fails to comply with statutory Health and Safety requirements and prohibitions.
10. **Liability, Indemnity and Insurance**
 - a) IF shall not be liable for any loss of or damage caused either to any physical property of the Company or its staff or agents of any physical injury (including injury resulting in death) sustained by the staff or agents of the Company other than by reason of any negligent act or omission of IF, IF employees or agent during the performance of the Services.
 - b) The Company shall indemnify IF against any claim, demand or liability made against or incurred by IF or any agent of IF in respect of any loss of, or damage to, any property of the IF's personnel or injury (including injury resulting in death) sustained by IF during the performance of the Services unless such loss, damage or injury is caused by the negligent act or omission of IF or any of its staff or agents;
 - c) The Company shall be responsible for effecting suitable Public Liability and Employer's Liability insurance in respect of the matters which are the subject of liability or indemnity under these Conditions.
 - d)(i) IF does not warrant the suitability of the Proposal to the Company and the Company shall be responsible for assessing and satisfying itself as to the benefits (if any) to be achieved by the Company in accepting the Proposal.
 - (ii) IF shall not be liable for any loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Company whether direct or consequential (including but without limitation any economic loss or other loss of turnover profits business or goodwill) as a result of any reliance placed by the Company on the contract.
 - e) Each provision of this clause 10 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstances and shall remain in force notwithstanding the termination or expiry of this Contract.
 11. **Termination due to Insolvency**
 - a) The Company shall notify IF in writing immediately if the Company passes a resolution to wind-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
 12. **Termination for breach of Contract**

If a party commits a material breach of the Contract and, in the case of a breach which is capable of remedy, fails to remedy such breach within 28 days of being required by the other party in writing to do so, the injured party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party and without prejudice to any rights of the parties accrued to the date of the determination of the Contract.
 13. **Cancellation by IF**

IF shall be entitled to terminate the Contract by giving the Company not less than 28 days' notice in writing to that effect without prejudice to any rights or remedies of the Company for breach of Contract.
 14. **Special Provisions**
 - a) In the case of any conflict or inconsistency between these Conditions and any conditions contained within the Proposal, the latter conditions shall prevail.
 - b) Both parties acknowledge that business or other circumstances may require IF to alter or amend the Proposal including the Services or IF engineers to be provided to the Company.
 - c) IF reserves the right to alter, amend or add to these terms and conditions from time to time providing copy of either such alteration or amendment in writing to the Company.
 15. **Copyright and Property in Information**
 - a) Nothing in the Contract or done under the Contract shall be taken to diminish any IF copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Contract vest in IF.
 - b) All copyright and other intellectual property rights in any of the IF Materials belong absolutely to IF and IF reserves all rights in all and any of them.
 - c) Following provision of the Services, certain materials, including IF Materials, may be left on site with the Company for which IF hereby grants the Company a licence, the form of which is set out at Clause 16, subject to terms IF specifies, for the Company to use such materials, together with know-how and processes demonstrated, purely for the Company's own internal business and training purposes. The Company agrees to be bound by the terms IF specifies as a condition to the grant of any such licence.
 16. **Intellectual Property Licence**
 - a) Subject to the provisions of paragraphs (b), (c), (d) and (e) below, IF grants to the Company a non-assignable, non-exclusive royalty-free licence in the United Kingdom for ten (10) years from the earlier of the first day of supply of the Services or the date the Company signs the Proposal, to use the IF Materials for the Company's own internal business purposes, including the following purposes:
 - i) taking a reasonable number of photocopies to be used only for the purposes authorised under paragraphs (a)(iii), (a)(iv) and (a)(v) below;
 - ii) loading or copying on to the Company's information technology systems;
 - iii) training of the Company's employees;
 - iv) application of the IF process to other areas of the Company's own business only.
 - v) other uses with the prior written consent of IF from time to time.
 - b) Nothing in this licence shall prevent IF from developing, exploiting, using, dealing with or disposing of or manufacturing, assembling, selling, leasing or producing products using the IF Materials as IF sees fit in the absolute discretion of IF.
 - c) The Company agrees that the Company will not release, reveal, sell, dispose of or disclose in any way the IF Materials or any of them to any third party. In the event that the Company breaches the terms of this paragraph (c) then IF may terminate this licence immediately on notice to the Company.
 - d) In the event that this licence is terminated for any reason the IF Materials, including any copies of the IF Materials made by the Company, shall immediately be returned to IF by the Company. Any copies of the IF Materials stored on the Company's information technology systems, including those stored on CD-ROM format or other non-printed media shall be destroyed by the Company.
 - e) The Company shall not assign, sub-licence, charge, sub-contract or otherwise transfer any of the Company's rights under this licence without the prior written consent of IF.
 17. **Non Solicitation and Non-Engagement**
 - a) The Company and its Group during the term of the performance of the Services and a period of 8 months after expiry or termination however caused shall not directly or indirectly solicit or offer employment or engagement to IF staff who have been employed or engaged in the provision of the Services. For the purposes of this clause 'solicit' means the soliciting of such a person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
 - b) In the event that the Company or its Group is in breach of a clause 17(a) above then the Company shall pay to IF by way of liquidated damages an amount equal to 20 per cent of the gross annual salary (as at the time of the breach) of the person so solicited, employed or engaged. This provision shall be without prejudice to IF's ability to seek injunctive relief.
 - c) The Company hereby acknowledges and agrees with the formula specified in clause 17(b) above as a reasonable estimation of the loss which would be incurred by IF as a result of the loss of the person so employed or engaged.
 - d) For the purposes of this clause 17, Group shall mean, in relation to the Company, every other company which from time to time is a subsidiary or holding company of the Company and the terms "subsidiary" and "holding company" shall have the meanings given to them by Sections 736 and 736A of the Companies Act 1985.
 18. **The Contracts (Rights of Third Parties) Act 1999**

A Person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any rights or remedy of a third party which exists or is available apart from that Act.
 19. **Entire Agreement**

The Proposal and these Conditions shall constitute the whole of the terms agreed between the parties hereto in respect of the subject matter of this Contract and the Company hereto acknowledges that in entering into this Contract it has not relied on any representations or warranties other than as expressly set out in the Proposal and any other said warranties or representations (whether express or implied) are hereby excluded.
 20. **Law and Jurisdiction**

The Contract shall be governed by, and construed in accordance with, the provisions of English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties to the Contract hereby submit.
 21. **Data Protection**

IF may use the information obtained in the course of this Contract for marketing, evaluation purposes and reference purposes. IF may disclose your information to third parties. IF may share your information with other SMMT departments. IF or SMMT may contact the Customers directly by mail, telephone, email or fax with information regarding, forthcoming IF events and SMMT goods and services amongst other things.
 22. **Force majeure**

If the performance of this Agreement or any obligation under it is prevented, restricted or interfered with by reason of force majeure, including (but not limited to) war, insurrection or riots fire, tempest, floods, storm, Acts of God or other natural causes, explosion or any other circumstances beyond the reasonable control of the party obliged to perform it, the party so affected, upon giving prompt notice to the other party, shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use all reasonable endeavours to avoid or remove such causes of non-performance and shall continue performance under the Agreement with the utmost despatch whenever such causes are removed or diminished
 23. **IF Registered Office**

The Society of Motor Manufacturers and Traders Limited, Forbes House, Halkin Street, London, SW1X 7DS. Registered in England, Number 74359.