

Terms of Purchase for McBraida Plc
Reference: McB/ToP/07-2016

1 Interpretation

- 1.1 In these Terms:
- "**BUSINESS DAY**" means a day (not being a Saturday, Sunday or public holiday) on which banks are open for business in the city of London.
 - "**BUYER**" means McBraida Plc (registered in Cardiff with registered number 533277).
 - "**CONTRACT**" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services and is created on receipt of the Order by the Seller.
 - "**DELIVERY ADDRESS**" means the address stated on the Order.
 - "**DELIVERY DATE**" means the required date of delivery for Goods and Services as specified in an Order (as varied from time to time through an Orderbook Review Process) or, where the Buyer agrees to collect the Goods from the Supplier, the date which is one working day before the Buyer's required date for the Goods.
 - "**FORECAST**" – a non-binding indication of the Buyer's likely future requirements for Goods or Services;
 - "**GOODS**" means the goods (including any instalment of the goods or any part of them) described in the Order;
 - "**INTELLECTUAL PROPERTY**" – patents, rights to inventions, copyright and related rights, trade marks and service marks, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
 - "**LEAD TIME**" – means the maximum time which the Seller requires between the receipt by the Supplier of an Order, and the Delivery Date (being a Lead Time which, in respect of any Goods or Services, has been agreed between the Seller and the Buyer in writing before an Order is placed).
 - "**ORDER**" means the Buyer's purchase order or scheduling agreement (sent to the Seller in writing) to which these Terms are annexed, setting out (among other things) the Goods and Services which are the subject of the Order, the Delivery Date for those Goods and Services, and (at the Buyer's discretion) a Forecast for future requirements of similar Goods and Services;
 - "**ORDERBOOK REVIEW PROCESS**" – a review, carried out by the Buyer, of its orderbook (and forecast future requirements) based on the Buyer's customers' demand, in order to enable the Buyer to manage any Orders (and Forecasts) which it has placed with the Seller.
 - "**PRICE**" means the price of the Goods and/or the charge for the Services;
 - "**SELLER**" means the person so described in the Order;
 - "**SERVICES**" means the services (if any) described in the Order;
 - "**SPECIFICATION**" includes any plans, drawings, data or other information relating to the Goods or Services;
 - "**TERMS**" means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
 - "**WRITING**", and any similar expression, includes facsimile transmission and electronic mail.
- 1.2 Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation

2 Basis of purchase

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms. In the event of a conflict between the provisions of these Terms and the provisions of any Order, the provisions of the Order shall have priority.
- 2.2 The Order shall be deemed to be accepted on the earlier of the Seller issuing a written acceptance of the Order, and the Seller doing any act consistent with fulfilling the Order.
- 2.3 The Seller shall notify the Buyer as soon as practicable, and in any event within 2 working days following receipt of the Order, whether the Seller accepts the Order. Any issues with the Order shall be raised with the Buyer immediately to enable timely resolution.
- 2.4 If, following an Orderbook Review Process, the Buyer identifies that it requires to change the Delivery Date for any Goods or Services comprised in an Order, it may notify the Seller of its new required Delivery Date, and:
- 2.4.1 if the required Delivery Date falls after the end of the Lead Time for that Order, the Delivery Date shall be amended to reflect the required Delivery Date; or
 - 2.4.2 if the required Delivery Date falls before the end of the Lead Time for that Order, the Seller shall notify the Buyer within 5 days of receipt of the request to change the Delivery Date whether or not the Seller will be able to meet the required Delivery Date. If the Seller notifies the Buyer that it will be able to meet the required Delivery Date (or if the Seller makes no notification to the Buyer), the Delivery Date shall be amended to reflect the Buyer's required Delivery Date. If the Seller notifies the Buyer that it will not be able to meet the required Delivery Date, the Seller shall use all reasonable endeavours to meet the Buyer's required Delivery Date (and the Seller and the Buyer shall cooperate in good faith to agree a firm Delivery Date), and the Supplier shall in any event deliver the Goods or Services no later than the end of the Lead Time for those Goods or Services.
- 2.5 The Buyer may (but shall be under no obligation to) update any Forecast following an Orderbook Review Process in order to inform the Seller of the non-binding likely future requirements of the Buyer.
- 2.6 Any Forecast is an estimate only, given by the Buyer to the Seller for planning purposes. Subject to the provisions of Clause 2.7, a Forecast does not constitute a commitment by the Buyer to purchase Goods or Services specified in the Forecast in the volumes or on the dates specified in the Forecast, or at all, unless and until those requirements have been set out in an Order as a firm requirement of the Buyer with a Delivery Date set. The Seller agrees that it shall inform Buyer of any concerns in relation to meeting the requirements of any Forecast.
- 2.7 Where the Seller has decided, acting reasonably and determined by lead-time considerations, to purchase materials in anticipation of the Buyer's future requirements as set out in a Forecast prior to the placement of the relevant Order, the Buyer shall, if the relevant firm Order is not placed within 6 months of the projected delivery date which is set out in the Forecast, reimburse the Seller in respect of its

costs of placing the materials purchase order (to the extent that the Seller will not be able to use those materials for other purposes) and shall deal with such materials as directed by the Buyer.

- 2.8 The Seller recognises the right of the Buyer to cancel an Order in accordance with these Terms and Conditions. As such, the Seller agrees that it shall not commence manufacture of any Goods or the performance of any Services specified in an Order until the date which is the equivalent of the Lead Time prior to the Delivery Date in respect of those Goods or Services.
- 2.9 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.10 If the Buyer contributes the full cost of any jigs, tooling, test equipment, related drawings, information and other equipment or materials which the Seller requires to use for the delivery of those Goods or Services (or where the Buyer issues equipment to the Seller for those purposes), the following provisions shall apply:
- 2.10.1 such items shall be owned by the Buyer, and the Seller will keep an auditable register of this equipment and will mark that equipment as the property of the Buyer;
- 2.10.2 the Seller will, on the request in Writing from the Buyer, return such equipment to the Buyer (at the Seller's cost);
- 2.10.3 the Seller will only use such equipment for the purposes of fulfilling the Order, or fulfilling other orders for similar Goods or Services which are placed with the Seller by the Buyer;
- 2.10.4 the Seller shall maintain in place a policy of insurance in respect of physical damage or loss of such equipment (with a limit of indemnity of not less than the replacement value of that equipment); and
- 2.10.5 where the Seller agrees to fund the purchase of such equipment, the Order in relation to which that equipment is purchased shall contain a separate line with cost allocated against that equipment.

3 Specifications

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with any Intellectual Property in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such Intellectual Property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3 The Seller shall comply with all legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services and will comply with any regulations and requirements of Governments and (where the Buyer has notified such a requirement to the Seller) the Buyer's other customers, which are relevant to the provision of the Goods or Services.
- 3.4 The Seller agrees that the Buyer shall have the right to enter the Seller's facilities at reasonable times to inspect the facility, Goods, work, materials, and property of the Buyer. Such inspection shall not constitute or imply acceptance of any Goods, work or material.
- 3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.
- 3.7 If the Supplier is supplying a product (i.e. any Goods or Services other than software or data) the Supplier shall procure that such product does not contain any conflict materials, tantalum, tungsten, tin or gold, that originated in the Democratic Republic of Congo or any adjoining countries which are defined as Angola, Burundi, Central African Republic, Congo Republic (a different nation to the Democratic Republic of Congo), Rwanda, Sudan, Tanzania or Zambia. This requirement must be flowed down to all of the Supplier's sub tier suppliers. If, at any stage of manufacture or production, it is determined by the Supplier or any of the Supplier's sub tier contractors that any conflict materials as described above were incorporated into the product(s) being delivered to the Buyer, and originated in one of the countries referred to above, the Supplier must provide to the Buyer a listing of the conflict materials and the relevant country.

4 Price of the Goods and Services

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
- 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller and such discounts should be included in the Seller's quotations.

5 Terms of payment

- 5.1 The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise agreed in Writing, the Buyer shall pay the Price of the Goods and the Services within 60 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.

6 Delivery & Acceptance

- 6.1 The delivery of Goods shall be DDP (Incoterms 2010). The Goods shall be delivered duty paid to, and the Services shall be performed at, the Delivery Address on the Delivery Date stated in the Order, in either case during the Buyer's usual business hours as indicated on Buyer's website or as otherwise agreed in Writing between Buyer and Seller.
- 6.2 Where the Delivery Date is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of its required Delivery Date, and the provisions of Clauses 2.4.1 and 2.4.2 shall apply in determining the obligations of the Seller to meet that required Delivery Date.
- 6.3 The timing of delivery of the Goods (in full) and timing of performance of the Services) are of the essence of the Contract and will be used to measure Seller's performance.
- 6.4 Whenever there is a non-conformance in the Goods which is discovered at Seller's premises, or an actual delay or threat to delay the timely performance of the Order, the Seller shall immediately notify the Buyer in writing of the expected length of any anticipated delay

(and shall keep the Buyer updated in that regard) and shall take, and pay for, all steps necessary to mitigate the potential impact on the Buyer of any such delay.

- 6.5 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.6 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.7 The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.8 If the Buyer notifies the Seller that any of the Goods or Services do not conform in all respects with the Specification or the Order, the Seller shall, within 14 days from the Seller's receipt of the Buyer's notification, investigate the non-conformity and submit to the Buyer a written report of its investigation and conclusions, together with a proposed corrective action plan with timeframes acceptable to Buyer. The Seller shall issue a revised corrective action plan to accommodate any reasonable requirements of the Buyer, and the Seller shall implement such corrective action plan in accordance with any timescales set out in it. Where any nonconforming parts are, in the opinion of the Buyer, not reworkable, the Seller shall dispose of such parts in accordance with the instructions of the Buyer and shall indemnify the Buyer in respect of all losses, costs, expenses and liabilities of the Buyer which arise as a result of or in connection with any failure of the Seller to act in accordance with those instructions.
- 6.9 Notwithstanding any other provisions of this Contract, the Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Goods, including but not limited to labour and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, assembly, reinstallation, reinsertion, retrofit and any and all other such corrective action costs incurred by Buyer.
- 6.10 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.11 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer. Where any products are delivered by the Buyer to the Seller, for the Seller to use in relation to the manufacture of the Goods or the provision of the Services, any reusable trays systems in which such products are transported or packed shall be kept with such products by the Seller at all times, and shall be returned with such products after any Service is completed.
- 6.12 If the Goods are not delivered or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay 2.5 per cent of the Price for every week's delay, up to a maximum of 10 per cent. The Buyer and the Seller agree that this represents the reduction in value to the Buyer of the provision of the Goods or the Services, where such Goods or Services have been delayed.

7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 7.2 In cases where Goods which are the property of the Buyer are issued to the Seller (or where the Buyer has funded the purchase of equipment in accordance with Clause 2.10), the Seller shall be liable for the risks of damage to or loss of those Goods and that equipment whilst in the Seller's possession.
- 7.3 The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8 Conditions of Inspection

Goods shall be released by the Seller in accordance with one or more of the following requirements as specified in the Order.

- 8.1 The Sellers own inspection organisation as registered in the Ministry of Defence list of approved contractors.
- 8.2 Subject to inspection and certification in accordance with the Sellers BS EN ISO 9000 registration.
- 8.3 The Sellers own inspection organisation as approved by Rolls-Royce Plc to RR 9000:SABRe.
- 8.4 The Sellers own inspection organisation approved by GKN Westland Transmission to Q500 conditions.
- 8.5 The Sellers own inspection organisation as approved by BAE Systems.
- 8.6 The Sellers own inspection organisation as approved by AIRBUS to AUK/SA/001.
- 8.7 Any other inspection requirement quoted in the Order.

9 Warranties and liability

- 9.1 The Seller warrants to the Buyer that the Goods will: be free from defects in material workmanship and where the Seller has responsibility for design, free from defects in design;
- 9.1.1 correspond with any relevant Specification or sample; and
- 9.1.2 comply with all statutory requirements and regulations relating to the sale of the Goods.
- 9.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 9.3 Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- 9.3.1 for the Goods to be returned to the Seller's premises at the Seller's expense and for the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
- 9.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 9.4 The Seller shall indemnify the Buyer against all liability, loss, damages, costs and expenses (including legal expenses) up to a limit of £5 million in any one claim awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 9.4.1 breach of any warranty given by the Seller in relation to the Goods or the Services:
- 9.4.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, 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 supplied by the Buyer;
- 9.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 9.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 9.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

- 9.5 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
- 9.5.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.5.4 import or export regulations or embargoes;
- For the avoidance of doubt, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party) shall not be considered an excusable delay.
- 9.6 The Seller shall maintain in force an Insurance Policy with a reputable Company with an indemnity limit of £5 million on any one claim to cover its obligations under this Clause 9.
- 9.7 In performing its obligations under this Contract, the Seller shall and shall procure that its sub-contractors do, comply with all applicable laws, statutes, regulations and codes from time to time in force, and with any policies or codes of conduct of the Buyer which the Buyer may notify to the Seller from time to time.

10 Termination

- 10.1 Without prejudice to any of the Buyer's rights and remedies, the Buyer may terminate any Order, in whole or in part, for its convenience upon written notice to Seller.
- 10.2 Upon termination of any Order, the Seller shall:
- 10.2.1 immediately cease all work on fulfilment of that Order, and shall place no further subcontracts or orders for materials, services or facilities in respect of that Order; and
- 10.2.2 prepare and submit to the Buyer an itemised list of all completed and partially completed Goods and/or Services, and a statement of any costs claimed by the Seller in accordance with Clause 10.3.
- 10.3 The Buyer will pay the Seller, in full and final satisfaction of all claims arising out of such a termination:
- 10.3.1 the cost to the Seller of all Goods and Services which the Seller has justifiably produced and completed in accordance with such terminated Order or part thereof and which the Buyer has not paid for;
- 10.3.2 the cost to the Seller of settling any claims for necessary termination of sub-contracts justifiably committed in respect of such terminated Order or part thereof (provided that the Seller has included in such sub-contracts a termination for convenience clause in substantially the same terms as this Clause 10); and
- 10.3.3 the cost to the Seller of any justified work-in-progress in respect of such Order or part thereof.
- 10.4 The Seller will give the Buyer reasonable assistance to ascertain the extent of such work-in-progress. The amount payable to the Seller under this Clause 10 will not exceed the total amount that would have been payable to the Seller for the Goods or work and the Seller will submit notice of its claim within 2 months of termination. Any finished Goods and/or Work and any Work in progress paid for by the Buyer under this clause 10 will be delivered to the Buyer in accordance with Clause 6 above.
- 10.5 The Buyer shall have no obligation to pay any amounts to the Buyer pursuant to Clause 10.3 above, where such costs relate to work which was carried out in relation to Goods or Services before the date which is the equivalent of the Lead Time prior to the Delivery Date in respect of those Goods or Services.
- 10.6 The Buyer may terminate the Contract or any Order without liability to the Seller by giving notice to the Seller at any time if:
- 10.6.1 such notice is given before the date which is the equivalent of the Lead Time prior to the Delivery Date in respect of those Goods or Services;
- 10.6.2 there is any material change in the nature of the business of the Seller, or any change in the location of the Seller or the place from which the Seller will provide the Goods or Services (and the Seller shall notify the Buyer of any such change at least six months prior to such change occurring);
- 10.6.3 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 10.6.4 an administrator or an administrative receiver of any of the property or assets of the Seller is appointed;
- 10.6.5 the Seller ceases, or threatens to cease, to carry on business; or
- 10.6.6 the Buyer reasonably believes that any of the events mentioned above is likely to occur in relation to the Seller and notifies the Seller accordingly.

11 General

- 11.1 The Seller shall adopt and comply with a Code of Conduct or policy statement regarding business conduct, ethics and compliance that satisfies, as a minimum, the principles and expectations set out in the McBraid plc Code of Conduct available from the Buyer or the Buyer's website.
- 11.2 The Seller is obliged to notify Buyer within 5 working days about any changes in the manufacturing process, any suppliers used by the Seller, the name or location of any facilities of or used by the Seller, or the ownership of the Seller and provide the Buyer at all times with up to date details of relevant quality assurance approvals.
- 11.3 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without the Written agreement with Buyer.
- 11.4 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice. Where a notice is given by electronic mail, such notice shall be sent, in the case of notices to the Buyer, to purchasing@mcbrida.com, and in the case of notices to the Seller to the e-mail address set out in the Order.
- 11.5 Notices sent to and from addresses in the UK shall be sent by pre-paid first class post. Notices sent to or from addresses outside of the UK shall be sent by air mail. A notice sent by first class pre-paid post will be deemed to have been served on the second Business Day after posting. A notice sent by air mail shall be deemed to have been served on the fifth Business Day after posting. Notices sent by electronic mail shall (unless a delivery failure notification is received by the sender) be deemed to have been received on the next Business Day following the sending of the electronic mail.
- 11.6 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.7 No variation to these Terms shall be binding unless agreed in Writing between the Buyer and the Seller.
- 11.8 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

- 11.9 Any dispute arising under or in connection with these Terms or the sale of the Goods shall be referred to mediation by a single mediator appointed by agreement.
- 11.10 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the exclusive jurisdiction of the English courts.