



## GENERAL TERMS AND CONDITIONS OF SALE

of

CHESS DYNAMICS LIMITED

(hereinafter called "the Company")

---

### 1 INTERPRETATION

1.1 For the interpretation and the purpose of the GTC, the words/terms listed below shall have the meanings as follows:

**"Buyer"** shall mean any person, company, public or private entity, interested in the acquisition of CHESS Supplies and/or Services on the basis of a Proposal.

**"Contract"** shall mean:

- either the contract signed by the duly empowered representatives of the Buyer and CHESS and resulting from the Proposal, or
- the order issued by the duly empowered representative of the Buyer and accepted by the duly empowered representative of CHESS and resulting from the Proposal, or
- the contract concluded automatically once a Product is sent by the Buyer to CHESS for the performance of Maintenance Services in accordance with paragraph 11.2.2 of the GTC.

**"Documentation"** shall mean the documents related to the use and/or maintenance of the Products and Software, mentioned in the Proposal and to be delivered by CHESS to the Buyer in accordance with the Contract.

**"GTC"** shall mean these General Terms and Conditions.

**"Information"** shall mean all information and data including technical, financial or commercial contained in any document or information support (including software) provided by CHESS with the Proposal and/or in connection with the performance of the Contract.

**"Maintenance Services"** shall mean all after sales and after warranty services, whether preventive maintenance or corrective maintenance, as described in the Proposal and to be performed by CHESS in accordance with the Contract.

**"Parties"** shall mean both the Buyer and CHESS.

**"Party"** shall mean either CHESS or the Buyer.

**"Product"** shall mean any of the Products.

**"Products"** shall mean all the equipment and embedded computer programs and/or tool(s) and/or spare part(s) as listed in the Proposal to be delivered by CHESS to the Buyer in accordance with the Contract.

**"Proposal"** shall mean all the documents (and any revision and/or amendment thereof) constituting an offer, including without limitation commercial, technical, and financial documents, sent by CHESS to the Buyer together with the GTC.

**"Related Services"** shall mean all services referred to in the Proposal and which are secondary to the sale of Supplies, to the exclusion of Maintenance Services, including design services, training and/or technical assistance, to be rendered by CHESS in accordance with the Contract.

**"Services"** shall mean the Related Services and/or Maintenance Services.

**"Software"** shall mean all the software programs not embedded into the Products listed in the Proposal and to be delivered by CHESS to the Buyer in accordance with the Contract.

**"Supplies"** shall mean all Product and/or Software and/or Documentation listed in the Proposal and to be delivered by CHESS to the Buyer in accordance with the Contract.

**"CHESS"** shall mean the CHESS entity issuing the Proposal and referred to in the commercial part of the Proposal.

1.2 The Proposal shall be governed by the GTC unless otherwise expressly agreed in the other documents of the Proposal or as agreed in the Contract.

1.3 Except if the Proposal provides an expiry date, it may be subject to modification or withdrawal by CHESS at any time until the conclusion of a Contract by notice to the Buyer. However, in the absence of expiry date in the Proposal and even without notice by CHESS, the Proposal shall be considered as null and void six (6) months after its date of issuance if at that time no Contract has been concluded/signed.

## 2 CONTRACT

- 2.1 CHESS shall not be bound in any way whatsoever until the Parties formally enter into a Contract. No condition issued by the Buyer shall commit CHESS unless expressly agreed in writing by CHESS. The GTC shall apply to any Contract, unless otherwise agreed in writing by CHESS.
- 2.2 The contractual documents applicable to the Contract are constituted by the following documents being understood that, in the event of any conflict, discrepancy, ambiguity, inconsistency or incompatibility between said documents, or if there shall merely be a doubt as to which should apply in preference to the other, then, these documents shall be interpreted according to the order of precedence in which they are enumerated below:
- (1) the specific provisions of the Contract itself, being understood however that:
    - (i) when the Contract is formed by a purchase order issued by the Buyer and accepted by CHESS, the specific provisions of the acceptance form issued by CHESS shall take precedence over the specific provisions of the purchase order previously issued by the Buyer; and
    - (ii) any general document issued by the Buyer such as General Terms and Conditions of Purchase are expressly excluded, including when said general document is printed on the back or attached to any purchase order,
  - (2) the provisions of the Proposal,
  - (3) the provisions of the General Terms and Conditions for international sales and services and its Annex,
  - (4) any appendix and document enclosed by reference in the clauses of the Contract.
- 2.3 The governing language of this Contract shall be the English language.

## 3 CONTRACT EFFECTIVE DATE

- 3.1 Any Contract signed/concluded by the Parties shall become effective on the date upon which all following conditions are fulfilled:
- I. receipt by CHESS of the advance payment as stipulated in paragraph 4.3.1 of the GTC,
  - II. notification of the opening of the documentary credit and of its confirmation by CHESS' bank as per paragraph 4.3.1 of the GTC,
  - III. if applicable, receipt by CHESS of the Non Transfer Certificate stipulated in clause 6 of the GTC, as well as any other enduser certificate whatsoever that may be required by foreign authorities, duly signed by the Buyer (and, if applicable, by the end-user), and
  - IV. grant by the appropriate governments of all export authorizations and licenses required for the performance of the Contract, in particular the delivery of the Supplies and the performance of Services, in accordance with clause 6 of the GTC.
- 3.2 In case the above mentioned conditions would not be fulfilled within a period of five (5) months computed from the date of signature/conclusion of the Contract, said Contract shall automatically be deemed null and void and of no further effect.

## 4 PRICES – PAYMENTS

- 4.1 Prices
- 4.1.1 Prices refer only to such Supplies and Services as specified in the contractual documents mentioned in paragraph 2.2 above.
- 4.1.2 Unless otherwise provided in the Contract, prices of Supplies shall be deemed stated for delivery as per Incoterm **Free Carrier (FCA)** London Airport (Incoterms 2010, International Chamber of Commerce – Publication n°715E).
- 4.1.3 The prices have been computed free of UK VAT (Value Added Tax). Unless otherwise specified in the applicable Incoterm, CHESS shall bear all taxes, fees, royalties, levies, duties and other charges of any nature, applicable or to become applicable in England for the performance of the Contract.
- 4.1.4 Unless otherwise specified in the applicable Incoterm, the Buyer shall bear all taxes, fees, royalties, levies, duties, withholding taxes and other charges of any nature, applicable or to become applicable outside England for the performance of the Contract.
- 4.2 Currency

Prices are stated in GBP which shall be the accounting, invoicing and payment currency.

#### 4.3 Conditions of payment

4.3.1 The payment shall be made according to the following terms:

- an advance of thirty percent (30%) of the total Contract price shall be paid by bank transfer on CHESS' bank account within thirty (30) calendar days from the date of signature/conclusion of the Contract (as a condition for the Contract's effectiveness as stipulated in paragraph 3.1. (i) of the GTC), against remittance to the Buyer of commercial invoice for the same amount.
- the balance, seventy percent (70%) of the total Contract price, shall be paid to CHESS upon delivery of the Supplies and/or performance of the Services through a documentary credit irrevocable, transferable, divisible, extendible, confirmed and allowing partial shipments, to be opened or caused to be opened by the Buyer at its expense within thirty (30) days from the date of signature/conclusion of the Contract. The documentary credit shall be opened by a first class bank in the country of the Buyer, and notified confirmed and payable to CHESS by the bank specified by CHESS in the Contract (refer to the model in Annex).
  - Where the payment terms defined in 4.3.1 cannot be provided within the financing of the Contract then the Parties will establish a mutually agreed payment plan that provides for a neutral cash flow through the duration of the Contract.

4.3.2 Said documentary credit shall be valid up to three (3) months after the latest of: date of last delivery of the Supplies or date upon which last Services shall be performed, and shall be automatically extended by period(s) of three (3) months at the request of CHESS in order to allow complete drawing. It shall be governed by the Uniform Customs and Practice for Documentary Credits (UCP) of the International Chamber of Commerce (Publication No. 600, 2007 Edition).

4.3.3 The documentary credit shall be paid against presentation of the following documents, excluding any other additional document:

- For the Supplies:
  - commercial invoice,
  - forwarder's certificate of receipt as per FIATA model (FIATA FCR) or AirWay Bill or any other document proving delivery of the batch or, as per paragraph 7.5, storage certificate signed by CHESS only, and packing list.
- For Services:
  - commercial invoice, and
  - Execution Service Certificate (in accordance with paragraph 11.1.1 of the GTC).

4.3.4 Compliance with the payment dates and times is of the essence of the Contract. Expiration of the due date for payment automatically constitutes formal notice. Should the Buyer fail to meet its payment obligations on due dates, the Buyer shall be liable for late payment interests, without formal notice, computed from said due date to actual date of payment, at the interests rate applied by the European Central Bank to its last refinancing operation plus eight (8) percentage points. CHESS shall also be entitled to suspend the performance of the Contract, including to withhold future deliveries, until delinquent payments are made, being understood that the Buyer shall indemnify and reimburse CHESS for any applicable additional storage charges together with any additional insurance and/or double handling charges.

4.3.5 The foregoing is without prejudice to any other rights and remedies provided for in the GTC, particularly those stipulated in clause 17 of the GTC.

4.3.6 All monies owed under any Contract shall be due and payable under the terms of the Contract and the Buyer is prohibited from setting off any and all monies owed under the Contract from any other sums, whether liquidated or not, that are or may be due to the Buyer, which arise out of a different transaction or contract with CHESS, its subsidiaries or affiliates.

## 5 TESTS AND ACCEPTANCE

The technical performances of the Products and Software, as advertised by CHESS, are the ones expected to be achieved during testing in the CHESS' factory, within certain reasonable tolerance limits which are defined in the contractual documents or which are in line with customary industry practices. Where the Products and/or Software delivered to the Buyer is intended to be installed in or with any item not supplied by CHESS, the Buyer shall remain solely responsible and liable for such installation and shall keep CHESS indemnified against and hereby waives definitively any claims resulting from damages caused by or suffered by said item and/or the Products and/or Software as a result of such installation.

- 5.1 After completion of manufacture and before delivery, the Products and Software shall be subject to factory acceptance tests.  
The tests are to be performed at CHESS' factory in order to check that the Products and Software comply with the technical specifications of the Proposal and with the relevant particular specifications, drawings, as well as with the standards and regulations in force at the time.
- 5.2 The acceptance tests shall be carried out by CHESS in accordance with the Acceptance Test Procedure (hereinafter referred to as "ATP") issued by CHESS quality department as in force at the date of completion of such tests.
- 5.3 CHESS shall inform the Buyer, with ten (10) calendar days prior notice, of the date(s) considered to perform the factory acceptance tests by letter, email or fax. The Buyer shall have the right to delegate representatives to attend the acceptance tests subject to written notification to CHESS of the bio data of these representatives within a period of one (1) week before the anticipated date of commencement of such tests. If the Buyer chooses not to send a representative to attend the acceptance tests, the Buyer shall notify CHESS accordingly within the same period of time. Failure of the Buyer to notify its decision concerning the attendance to the factory acceptance tests or failure of the Buyer's representative to attend such tests shall not delay or prevent the performance of such tests.
- 5.4 Upon successful completion of such factory acceptance tests, CHESS will prepare an Acceptance Test Report (hereinafter referred to as "ATR") and a Certificate of Compliance signed by the representative of CHESS quality department.
- 5.5 Any non-conformity discovered during the tests shall be mentioned in the ATR. Any non-conformity which is not affecting the operational use of the Products and/or Software shall be considered as minor non-conformity, shall not avoid the issue of a valid Certificate of Compliance and shall not constitute a ground for not signing the ATR. Non conformities shall be corrected within a reasonable period of time before or after delivery or treated as waivers by mutual agreement. Products and/or Software corrected by CHESS from any major non-conformity shall be again subject to factory acceptance tests in accordance with the ATP.
- 5.6 Should a representative of the Buyer attend to the tests at CHESS' premises, said representative shall sign the ATR within a period of two (2) calendar days from its date of submission. Should the representative of the Buyer refuse to sign the ATR, he shall notify CHESS in writing of the reasons thereof within the above mentioned period. Should the Buyer fail to send a representative to attend the tests or its representative refuse to sign the ATR without justified reasons within said period, said ATR signed by CHESS' representative only shall have the same value and effect as if a representative of the Buyer had also signed it. At the time of delivery, CHESS shall deliver to the Buyer a copy of ATR for each Product or Software and a copy of a Certificate of Compliance. All expenses incurred by the Buyer's representative for the attendance to the factory acceptance tests shall be entirely born and paid by the Buyer, except if otherwise stated in the Contract.
- 5.7 Upon signature of said ATR the factory acceptance of the Products and/or Software shall be considered as conclusive and final.

## 6 EXPORT CONTROL REGULATIONS

Should the Supplies, Services and/or Information be subject to UK export control regulations applicable to military and warfare equipment and/or sensitive technologies and/or any equivalent foreign regulations regarding components for military or dual use, the following provisions shall apply:

- 6.1 The Buyer hereby agrees not to sell, lend or deliver to any third party under any conditions whatsoever, with or without compensation, temporarily or permanently, all or part of the Supplies and Information controlled and supplied by CHESS without the prior written consent of the English government and/or any appropriate foreign government.
- 6.2 Furthermore, the Buyer hereby agrees not to provide all or part of the Supplies and Information controlled and supplied by CHESS to its employees that would be of a citizenship not expressly authorized by the relevant UK and foreign governments (including in the case of employees of dual citizenship).
- 6.3 In accordance with UK export control regulations and any other foreign export control regulations applicable to military and warfare equipment and as a condition for the coming into force of the Contract, the Buyer undertakes to sign and obtain from the end-user the signature of:
  - I. a Non Transfer Certificate in the form requested by the UK Government; and
  - II. any other end-user certificate whatsoever that may be required by foreign authorities.
  - III. Moreover, the Buyer also undertakes to sign and obtain from the end-user the signature of an End-User Receipt Form upon complete delivery of the Supplies. Once signed said End-User Receipt Form shall be transmitted to the CHESS for submission to the UK government.

6.4 The delivery of the Supplies and Information as well as the performance of warranty (as per clause 9 of the GTC) and Services are subject to the grant of the necessary valid export authorizations from the English and foreign governments. Any delay or event affecting the issue or maintenance of such authorizations, including but not limited to their non-renewal, suspension or cancellation, shall be dealt with as per clause 13 of the GTC.

## **7 DELIVERY / TIME SCHEDULE**

7.1 Delivery and completion dates are computed from the date of coming into force of the Contract (as stipulated in paragraph 3.1 of the GTC). Partial deliveries are allowed and CHESS shall be entitled to payment for such partial deliveries.

7.2 Delivery of Supplies shall be performed as per the Incoterm specified in the Contract (ICC Incoterms 2010) or, if not stated in the Contract, the Incoterm stipulated in paragraph 4.1.2 of the GTC.

7.3 When the carriage of the Supplies is made by the Buyer as per applicable Incoterm (Incoterms 2010, International Chamber of Commerce – Publication n°715E) and such Supplies are governed by export control regulations as per clause 6 of the GTC (Export Control Regulations), the Buyer commits:

- I. to carry them directly in the country(ies) of final destination authorised by appropriate governments in accordance with said clause 6; and
- II. that no such Supplies and/or any related Information will be conveyed in any country in transit or by a third party not authorized by the UK government and/or any appropriate foreign governments.

7.4 If the Supplies are damaged or short on delivery CHESS shall in no event be liable unless the Buyer notifies CHESS in writing within three (3) days of delivery and gives CHESS a reasonable opportunity to inspect the Supplies. No claim for nondelivery will be considered unless CHESS is notified in writing within eight (8) days of the expected date of delivery. When, according to the agreed Incoterm, the delivery by CHESS includes the carriage of the Supplies, any claim for damage shortages or non-delivery shall also be notified by the Buyer or its representative to CHESS' carriers in the manner and within the appropriate time limit prescribed by said carriers' terms and conditions. In the event of failure by the Buyer to give the appropriate notices as specified in this clause, any claim by the Buyer shall be deemed to have been waived and shall be absolutely barred.

7.5 Should, for any cause beyond CHESS' reasonable control, for example the non-payment by the Buyer of any payment term, the delivery be delayed or prevented, the Supplies shall be stored and the date of such storage shall be deemed to be the date of delivery. For that purpose, CHESS shall establish a storage certificate signed by the representative of CHESS Quality Department. Storage costs together with any additional insurance and/or double handling charges, if any, shall then be borne by the Buyer.

## **8 TRANSFER OF RISKS AND TITLE**

8.1 Risks in the Supplies shall be transferred to the Buyer in accordance with the Incoterm above elected (as stipulated in paragraph 4.1.2 of the GTC).

8.2 Title to the Products shall be transferred to the Buyer upon full payment against the contract value or, transfer of risks as mentioned above or, in case of storage, at the date of signature of the storage certificate. For avoidance of doubt, the Contract does not provide for the assignment of any intellectual property rights with respect to the Software and Information included in the Documentation, only license rights being granted as described in clauses 15 and 15.3.1 below.

## **9 WARRANTY**

9.1 Scope of warranty.

9.1.1 CHESS warranty covers defects in workmanship or materials which prevent the CHESS designed or manufactured Supplies from meeting the Contract specifications. Such warranty is calculated from the date of delivery or storage and shall not exceed twelve (12) months for the Supplies, unless as otherwise agreed in the Contract.

9.1.2 For parts or components of the Products sold but not designed or manufactured by CHESS and/or for Software licensed but not designed or developed by CHESS, CHESS shall transfer the benefit of the warranty from its suppliers to the Buyer.

9.1.3 For avoidance of doubt, this warranty shall not be applied to the thermal imaging cooling engine or to any consumable parts and pieces of the Products (such as batteries, fuses, liquid...), these items shall be provided exclusive of any warranty, conditions, term and undertaking, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise to the fullest extent permitted by law

9.1.4 This warranty shall not apply to (i) defects arising from or connected with any non-compliance by the

Buyer to the conditions of use, storage and/or maintenance of the Products as specified in the Contract and Documentation, and, more generally, to the standard rules of use, storage and maintenance. nor (ii) any repairs or modification carried out by persons not authorised in writing to do so by the Supplier, nor deficient installation and/or commissioning carried out other than by the Supplier or persons acting on its behalf.

- 9.1.5 The warranty neither shall apply to defects arising from or connected with (i) any combination of the Products and/or Software with any equipment and/or software program not approved by CHESS (ii) any accident, (iii) any normal wear and tear, (iv) an inadequate energy, or (v) a virus affecting the Software.
- 9.1.6 The warranty shall be limited to replacement or repair (at CHESS' option) of the defective Products or Software, in whole or part and to the delivery of the repaired or replacement Products or Software provided that (i) the defect has been reported to CHESS within fifteen (15) calendar days of its discovery, and (ii) the alleged defect is reproducible and the alleged defective Products or Software have been found effectively defective in CHESS' factory.
- 9.1.7 Chess reserves the right to adjust the scope of the Service or Deliverable offered or to discontinue support of the Software, by providing written notice to this effect to the Buyer (which notice may appear upon the website(s)). In particular, but without limitation, Chess may determine that certain Software (or a particular release or version of the Software) can no longer be supported owing to its age, or where a newer release or version of the Software has been made available by Chess
- 9.2 Implementation of the warranty for Products
- 9.2.1 In case of warranty claim, CHESS has, at its sole option and discretion the following options:
- I. Buyer shall, with a written prior notice of eight (8) days, return the alleged defective Products in whole or in part **Delivered At Terminal (DAT)** at London airport (UK), being understood that the Buyer shall be considered as a seller for the application of said Incoterm; or
  - II. CHESS shall assess the defective Product at the Buyer's facility
- 9.2.2 The repaired or replacement Products or part thereof shall be delivered by CHESS **Free Carrier (FCA)** at London airport (UK). In case of replacement, title to the defective Products or defective parts shall be transferred back to CHESS and title to the replacement Products or replacement parts shall be transferred to the Buyer simultaneously upon delivery. CHESS shall bear the costs of expertise, repair or replacement of the defective Products or parts under warranty and CHESS shall refund the Buyer, against presentation of the corresponding invoices, for the costs of insurance and transportation of the defective Products or parts thereof, from the shipping airport to London airport, and for the costs of insurance and transportation of the repaired or replacement Products or parts thereof, from London airport to the destination airport. Where CHESS assesses a Product not covered under warranty, the Buyer shall bear all transportation, insurance and expertise costs as well as repairs or replacement costs for damaged or out-of-order Products or parts thereof unless otherwise provided by a maintenance contract. For avoidance of doubt, CHESS shall, at its sole discretion, assess and determine whether a Product is covered under warranty and CHESS' decision shall be final.
- 9.3 Other conditions
- 9.3.1 The warranty at this Clause 9 shall apply to the Supplies or any part of them replaced or repaired in accordance with these Conditions so that the warranty shall continue for the balance of the warranty period outstanding at the date of the Purchaser's notification to the Supplier of the warranty claim. Beyond the above-mentioned warranty period, CHESS can propose Maintenance Services to the Buyer on the basis of a mutually agreed maintenance contract.
- 9.3.2 Chess' liability under this Clause 9 shall be the full extent of the Chess' liability for defects in the Supplies and shall be in lieu of and to the exclusion of any warranty or condition implied by law including (without limitation) any implied warranty as to the fitness for any particular purpose or quality of the Supplies or otherwise. Save as provided in this Clause 9 the Seller shall not be under any liability to the Purchaser whether in contract tort negligence or otherwise in respect of any defect in the Supplies or for any injury damage or loss resulting from any such defect (save for death or personal injury resulting from the negligence of the Supplier or its agents or sub-contractors).
- 9.3.3 The Buyer shall defend, indemnify and hold harmless CHESS from and against any claim or demand based on any cost, expense or damage caused by the defective Products or Software to the Buyer's or any third party's property. The Buyer also waives and shall make its insurers waive any claim, legal action or recourse against CHESS and its insurers on such ground.

## 10 SERVICES

CHESS shall perform the Related Services and Maintenance Services under the terms and conditions of the Contract provided that the Buyer has fulfilled its obligations necessary thereto.

### 10.1 Related Services

10.1.1 Upon completion of Related Services, the Parties shall sign an Execution Service Certificate (hereinafter referred to as “**ESC**”) against presentation of the Detailed Report of Intervention. Such signature shall occur not later than eight (8) days upon the date of presentation of the relevant certificate by CHESS.

10.1.2 Should the Buyer fail to sign the ESC within the above-mentioned period of time without justified reasons, such certificate signed only by CHESS shall be deemed as having been signed by the Buyer without reservation, with all effects pertaining thereto.

#### 10.2 Maintenance Services on Products

10.2.1 Each Maintenance Service shall be subject to a specific Contract with a specific price if such service is not already performed by CHESS in accordance with a signed framework contract for Maintenance Services with a yearly lump sum price or fixed prices by service line item agreed in advance.

10.2.2 All provisions of the GTC are applicable to the Maintenance Services referred to in the Contract subject to the following modifications or precisions:

- a. the provisions of paragraph 3.1 of the GTC shall not apply and are replaced by the following provisions: in case a Contract is concluded by Buyer’s acceptance of CHESS’ quotation, said Contract shall come into force upon receipt of the payment of the investigation costs and confirmation by CHESS of the grant by the appropriate governments of all authorizations and licenses necessary for the fulfillment of the Contract, as per clause 6 of the GTC ; in case a specific Contract is automatically concluded by the Buyer by sending the Products or part thereof to CHESS as per paragraph 11.2.2 here above, said Contract shall come into force after confirmation by CHESS of the grant by the appropriate governments of all necessary authorizations and licenses for the fulfillment of the Contract, as per clause 6 of the GTC ;
- b. the provisions of paragraph 4.1.2 shall not apply and are replaced by the following provisions: the prices of Maintenance Services shall be stated for the delivery of the repaired or replacement Products or parts thereof as per the Incoterm **FreeCarrier (FCA)** at London airport (Incoterms 2010 by the International Chamber of Commerce –Publication n°715E) being understood that CHESS shall be considered as the seller for the application of such Incoterm;
- c. the provisions of paragraphs 4.3.1, 4.3.2 and 4.3.3 shall not apply and are replaced by the following provisions: the Buyer shall pay a hundred percent (100%) of the price of the Maintenance Services, reduced if appropriate by the expertise costs paid by the Buyer upon acceptance of the quotation, by bank transfer at the time of delivery of the repaired or replacement Product or part thereof against presentation of a Certificate of Compliance for repaired or altered equipment and a commercial invoice;
- d. the provisions of clause 8 and paragraph 9.2.1 shall not apply and are replaced by the following provisions: in case of a request for implementing Maintenance Services on Supplies in whole or part, the Buyer shall, with eight (8) calendar days prior notice, send back the Products in whole or part **Delivered At Terminal (DAT)** at London airport, being understood that the Buyer shall be considered as the seller for the application of said Incoterm. The repaired or replacement Products or parts thereof shall be delivered by CHESS **Free Carrier (FCA)** at London airport, being understood that CHESS shall be considered as the seller for the application of said Incoterm. Risks tied to said Products or parts thereof shall be transferred according to said Incoterm. No title shall be transferred for the Products or parts thereof sent by the Buyer for the purpose of implementing Maintenance Services, except in case of replacement of the damaged or out-of-order Products or part thereof, being understood that in such a case the replaced Products or part thereof shall become again property of CHESS and that the replacement Products or part thereof shall become property of the Buyer simultaneously at the time of delivery to the Buyer according to Incoterm **FCA**.
- e. the provisions of clause 9 shall only apply to the part of Products which was subject to the Maintenance Services, being understood that the warranty period shall not exceed six (6) months from the date of delivery of the repaired or replacement Products or part thereof.

10.2.3 The turnaround time for Maintenance Services is calculated excluding time for transport, i.e. between the arrival of the Products or part thereof on which Maintenance Services have to be performed at London airport (UK) and the return of such repaired or replaced Products or part thereof at the same airport back to the Buyer according to the Incoterms referred to in paragraph 11.2.3 here above.

## 11 GENERAL CONDITIONS OF DELEGATION OF PERSONNEL

When delegating personnel to the other Party’s premises to perform the Contract, in particular to carry out the Services, the Parties shall comply with the following provisions:

- 11.1 Each Party shall, with the assistance of the other Party, ensure that its employees comply with all administrative requirements (including, without limitation, visas, medical certificates, entry, residence and work permits) in accordance with applicable regulations and shall bear all related costs.
- 11.2 Each Party shall maintain strict discipline and good order among its employees and shall ensure that its personnel comply with all regulations and safety rules applicable at the relevant premises.
- 11.3 The Parties shall agree on the working hours and working days of such employees in accordance with the regulations applicable at the relevant premises. However, employees shall be entitled to enforce their own religious holidays.
- 11.4 In case of accident or illness of an employee during his mission at the other Party's premises, whether such accident or illness occurs in the course of his mission or during off-time, the other Party shall ensure that the employee has access to the best medical treatment available locally. Any costs thus incurred by such other Party shall be finally borne by the employer (reimbursed or deducted).
- 11.5 If the period of incapacity through illness or accident continues beyond one (1) month or is such that it would be better for the employee to be repatriated as soon as possible, the employee shall be immediately repatriated to his country of origin, at the request of the employer or at his own request, at the expense of his employer.
- 11.6 In case of death of an employee, its employer, with the assistance of the other Party, shall organize the repatriation of the deceased and shall bear all costs thereof.

## **12 FORCE MAJEURE**

- 12.1 CHESS shall not be liable for any failure to perform any contractual obligations if the performance of the same is, in whole or part, delayed, prevented or hindered by an event of force majeure.
- 12.2 Shall be considered as an event of force majeure any event of which causes are beyond the reasonable control of CHESS, such as but not limited to: gales, floods, earthquakes, fires, explosions, accidents, riots, hostilities, war (whether or not declared), rebellions, sabotage, acts of terrorism, epidemics, quarantines, strikes and/or industrial conflicts, inability to procure Supplies, raw material or consumables from normally reliable sources (including without limitation electricity, water, fuel and the like), embargo, governmental decision, act or omission (e.g.: delay or failure to issue, or restriction, suspension or withdrawal of any license, permit or authorization), delay from a subcontractor caused by an event of force majeure as defined here above.
- 12.3 The occurrence of an event of force majeure shall automatically suspend the performance of the Contract and the time schedule of the Contract shall be postponed for the period necessary to overcome the effects of the force majeure event.
- 12.4 However, if the performance in whole or part of any CHESS' obligation under the Contract is delayed by reason of force majeure for a period exceeding six (6) continuous months, each Party may terminate the Contract or any part thereof as per paragraph 17.1. (iii) of the GTC, the Parties then shall try to establish by mutual agreement a liquidation settlement. Failure to reach such an agreement shall be deemed to be a dispute and settled as per clause 18 of the GTC.
- 12.5 Termination shall not affect debts already payable between the Parties at the termination date, in particular for the Supplies under production prior to the date of termination.

## **13 LIABILITY**

- 13.1 CHESS shall not be liable under any circumstances to the Buyer, its officers, agents, employees, successors and assignees, for any consequential, incidental, punitive or special damage of any kind or nature, including without limitation, for any losses, costs, damages, loss of revenue or profit, incurred or suffered by the Buyer or any third party as a result of, or arising out, of loss of use of the Supplies in all or in part or any failure of CHESS in connection with the Contract.
- 13.2 The total and cumulative liability of CHESS arising out or in connection with the Contract, from any cause whatsoever, whether in contract or in tort, shall never exceed twenty per cent (20%) of the Contract price. The Buyer waives any claim, legal action or recourse and shall hold CHESS and its insurers harmless from any claim, legal action or recourse that might be raised by its own insurers in excess of such amount.



13.3 The foregoing shall not affect the right of the Buyer to claim for compensation against CHESS with respect to direct damage that the Buyer may suffer as a result of gross negligence or wilful misconduct of CHESS. "Gross negligence" shall mean an action or omission implying an obvious and extremely severe lack of care of CHESS (considering the seriousness of the consequences a cautious man of the art would have anticipated) or an action or omission leading to presume a deliberate refusal to take into consideration these consequences and not only any kind of lack of care or lack of skill.

## **14 CONFIDENTIALITY - INTELLECTUAL PROPERTY RIGHTS – INFRINGEMENT**

### **14.1 Confidentiality**

- 14.1.1 The Buyer shall not use the Information for purposes other than those of an internal evaluation of the Proposal or, if a Contract has come into force, install, use and/or maintain the Products and/or Software.
- 14.1.2 The Buyer shall keep the Information confidential and shall not disclose it in whole or part to any person other than employees of the Buyer who need to know such Information for the purposes stipulated in paragraph 15.1.1 here-above. Any further disclosure shall be subject to the prior written consent of CHESS.
- 14.1.3 If a Contract has not come into force at the expiry or withdrawal date of the Proposal or any other later date limit mentioned in the Contract for the coming into force, the right to use the Information shall expire on such date and no further use shall be authorised. In this case the Buyer shall, within the following month, return the Proposal, all Information and any copies or, as an alternative, destroy them and issue a certificate of destruction to CHESS.
- 14.1.4 If a Contract has come into force, the Buyer undertakes to protect and keep the Information secret during the whole performance of the Contract and for a further period of ten (10) years after its expiry or termination.

### **14.2 Intellectual property rights**

- 14.2.1 The Information shall remain the exclusive property of CHESS along with all intellectual property rights attached thereto, including copyright as the case may be. CHESS retains and shall retain full ownership of all inventions, designs and processes produced or developed before or during (i) the preparation and negotiation of the Proposal as well as (ii) the course of performance of any Contract.
- 14.2.2 For avoidance of doubt, unless otherwise agreed (such agreement to be given in writing by the duly empowered representative of CHESS), the Buyer shall not make without limitation any of the following on the Supplies: copy, allow copying, decompile, reverse engineer, translate, modify, disassemble, put on the Internet or any intranet, publish, decode, improve, adapt, merge or otherwise reduce the Software in source code or any lower level of language.

### **14.3 Infringement**

- 14.3.1 CHESS shall hold harmless and protect the Buyer against any claim that might be based on an alleged infringement of intellectual property rights in the Buyer's country as a result of the use by the Buyer of the Products and/or Software in accordance with the specifications of the Contract, provided that (i) the Buyer informed CHESS no later than thirty (30) calendar days after receiving a claim for alleged infringement and has given to CHESS the entire direction of the suit or proceeding and (ii) the Buyer refrained from making any admission, declaration or arrangement with the third party filing said claim. In that case, CHESS undertakes, at its option and at its costs, to defend or settle the claim and pay the amount of the final judgement rendered against the Buyer or the amount of the settlement agreed by CHESS.
- 14.3.2 Notwithstanding the foregoing, at any time during the performance of the Contract or thereafter, in particular if CHESS considers that the Products and/or Software may be subject to a claim for infringement, CHESS may also, at its option and at its costs, (i) obtain the necessary rights for the Buyer to continue the use of the Products and/or Software, or (ii) modify or substitute the infringing Products and/or Software so as to avoid any further infringement, or (iii) if such solutions would not be possible for economical and/or technical reasons, take back the delivered Products and/or Software and refund the Buyer at the purchase price, less a reasonable amount for normal wear and tear of the Products.
- 14.3.3 This commitment shall not cover (i) any infringement resulting from the use of commercial off the shelf (COTS) components, commercial software and items for which CHESS has not obtained a similar guarantee from its supplier, (ii) any infringement resulting from the combination or association of the Products and/or Software with any other article, apparatus or device, or from the alteration of all or part of the Products and/or Software arising from any intervention made by other than CHESS and without

its written agreement, and (iii) any infringement related to Products and/or Software or parts thereof manufactured, developed or modified according to a design or requirements supplied by the Buyer.

- 14.3.4 In addition, CHESS shall not be held liable for any costs or expenses spent by the Buyer without CHESS' consent, nor for any direct or indirect damage that could result from any loss of use of the delivered Products and/or Software.
- 14.3.5 The foregoing states the entire liability of CHESS towards the Buyer with respect to disputes arising from claims based on infringements of third parties' intellectual property rights in connection with the use of the Products and Software delivered by CHESS.
- 14.3.6 Moreover, in no event shall CHESS be liable or committed to any obligation under the Contract for infringement of any intellectual property title or right issued or protected by any country which is not a member of the World Intellectual Property Organization (WIPO) or by any country with which England does not maintain diplomatic relations.

## 15 SOFTWARE LICENCE

- 15.1 CHESS hereby grants to the Buyer a non-exclusive, non-transferable, non-assignable and irrevocable licence to use the Software only with the computers and software programs for which such Software has been acquired according to the Contract and only for the limited number of copies stated in the Contract. This licence shall not be construed, deemed or interpreted as giving or having given the Buyer any proprietary right in any Software. The Software shall be supplied to the Buyer in object code only.
- 15.2 Unless otherwise agreed (such agreement to be agreed in writing by the duly empowered representative of CHESS), the Buyer shall not, in relation to the Software, do any of the following such as, but not limited to: copy, permit to be copied, decompile, reverse engineer, translate, modify, disassemble, place on the internet or any intranet, publish, decode, enhance, adapt, merge or reduce the Software into source code or any other low level language.
- 15.3 In the event that CHESS gives the Buyer written permission to do any of the aforementioned prohibited acts with the Software or associated Documentation, then the Buyer shall ensure that CHESS or the original supplier is named as the author and include any copyright legend or other applicable and/or relevant proprietary mark identifying CHESS or the original supplier as the author/owner. Notwithstanding the above, the Buyer may make one (1) back-up additional copy of the Software and any associated documentation for security only.
- 15.4 In the event that the license is terminated as a result of a breach by the Buyer, then the Buyer agrees to remove the Software from its machines and return, at its expense, or, if required, delete/destroy all the Software copies, the back-up copy and all associated Documentation and Information relating to the Software.
- 15.5 In the event that the Buyer needs further advice, assistance or Information to achieve interoperability not warranted under the Contract, then the Buyer may contact CHESS for a specific quotation. If CHESS provides the Buyer with such Information, then the Buyer agrees that it will only use that Information for the purpose of achieving interoperability to the exclusion of all others unless otherwise agreed in writing.
- 15.6 Notwithstanding the provisions contained herein, it is understood that, with respect to commercial Software, the original supplier's licence shall apply to the Buyer.
- 15.7 The licence granted in this clause 16 shall be effective concomitantly with the coming into force of the Contract as stipulated in clause 3 or in paragraph 11.2.3. (i) of the GTC as applicable. The completion or the termination of the Contract shall not relieve the Buyer from its obligations under this clause.

## 16 TERMINATION

- 16.1 Each Party shall be able to terminate the Contract in whole or part but only for the future with respect to the uncompleted part thereof, by operation of law, by certified mail with acknowledgment of receipt, in the sole following cases:
- I. material breach by the other Party of one of its substantial obligations under the Contract when such breach remains unremedied for a period of three (3) months after formal notice to remedy by the non defaulting Party; or
  - II. without formal notice, in case of declared bankruptcy or insolvency of the other Party, or the filing of a petition in bankruptcy or insolvency of such other Party, or any financial incapability of the other Party to perform its obligations hereunder; or

III. without formal notice, in case of a force majeure event for a continuous period exceeding six (6) months as stipulated in paragraph 13.4 of the GTC.

16.2 Termination for CHESS delay shall not occur before the LDs have reached their maximum amount as stipulated in paragraph 10.2 of the GTC.

16.3 Termination shall not prevent or delay the payment of any sum due or to be due by either Party, and shall not affect either Party's right to arbitration as per clause 18 of the GTC.

## **17 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

17.1 The Proposal and the Contract shall be governed and interpreted in accordance with English laws.

17.2 In the event of any dispute, controversy or claim arising out of or in connection with the Contract, particularly concerning the existence, validity, interpretation, performance and/or termination of the Contract (hereinafter referred as a "**Dispute**"), the Parties shall at first, do their best efforts to settle such Dispute amicably within their respective hierarchies.

17.3 If the Parties are unable to settle amicably the Dispute according to the foregoing within thirty (30) calendar days, the Parties agree to submit the said Dispute to settlement proceedings under the International Chamber of Commerce Alternative Disputes Resolution (hereinafter referred as "**ADR**") rules.

17.4 If the Dispute has not been settled within a period of sixty (60) calendar days, or any other period otherwise agreed by the Parties, after the filing of a request for ADR as mentioned above, such Dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such Rules.

17.5 The place of arbitration shall be London (England).

17.6 At each of the above-described steps, the language to be used in the proceedings shall be English.

ANNEX

MODEL OF IRREVOCABLE DOCUMENTARY CREDIT

**Beneficiary Address**..... BSUIFRPPXXX or CMCICFRPPXXX or  
 BNPAFRPPXXX (To be defined by CHES)

**40A (form of documentary credit)**..... Irrevocable

**31C (date of issue)**..... XXXXXX (30 days from signature/conclusion of  
 the Contract)

**40E (Applicable rules)** ..... UCP 600 (2007 edition)

**31D (date and place of expiry)**..... Last delivery date or completion date + 30 days  
 – England

**50 (applicant)**..... XXXXXXXX (the Buyer)

**59 (beneficiary)**..... XXXX (CHES company name)  
 XXXXX  
 XXXX (address)  
 XXXX (country)

**32B (currency code, amount)**..... GBP (GBP XXXXXX) (representing 70% of the  
 total contract amount)

**41D (available with by )**..... BSUIFRPPXXX or CMCICFRPPXXX or  
 BNPAFRPPXXX (To be defined by CHES) London by negotiation

**43P (partial shipments)**..... Allowed

**43T (Transhipments)**..... Allowed

**44E (Port / Airport of loading)**..... England, London Airport

**44F (Port / Airport of discharge)**..... XXXX

**44C (Latest date of shipment)**..... XXXX

**45A (Description of goods / services)**..... Shipment of XXXXXXXX Price terms: FCA  
 London Airport

**46D (documents required):**  
 - Signed commercial invoices in triplicate  
 - Original Airway bill or Forwarder's Certificate of Receipt (FIATA FCR) or storage certificate signed by CHES.  
 - Packing list.

**47A(additional conditions):**  
 1) This LC is subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision (ICC  
 Publication N°600).  
 2) Negotiating bank is authorized to claim reimbursement to the GBP correspondent of XXXX (name of issuing  
 bank).

**71B (charges):**  
 Issuing Bank charges are for applicant's account. Bank charges for establishing the LC with discrepancies are of  
 Applicant's account.  
 Advising / confirming bank charges are for the beneficiary's account.

**48 (period for presentation):**  
 Documents may be presented above twenty one (21) days from the date shipment but within the validity period of  
 the LC.

**49 (Confirmation instructions)**.....WITH.