



**AN AGREEMENT R-RGCP2003/1 DPCXXXX**

**BETWEEN**

**ROLLS-ROYCE plc**

**AND**

**XXXXXXXXXXXX**

**FOR THE SUPPLY OF**

**GOODS OR WORK TO ROLLS-ROYCE plc**

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This Agreement R-RGCP2003/1 DPCXXXX (the "Agreement") effective as of the XXX day of XXXXX 2003 is made between

ROLLS-ROYCE plc of 65 Buckingham Gate, London, SW1E 6AT  
("R-R")

and

XXXXXXXXXXXX of XXXXXXXXXXXX  
(the "Vendor")

Together referred to as the "Parties".

Whereas:

R-R may place purchase orders, schedule agreements, and/or framework orders ("Orders") on the Vendor from time to time for the supply of goods and/or work and this Agreement records the terms which will govern these Orders.

"Framework Orders" shall mean an order pursuant to which R-R may instruct services to be performed by the Vendor, such services being performed solely in accordance with the process supplied by R-R.

IT IS THEREFORE AGREED:

1. Application

This Agreement which shall be deemed to incorporate any appendix which the Parties have added to it, and any terms on or referred to in an Order (together called " Procurement Terms") will be the only express terms which govern procurement of goods ("Goods") or work ("Work") specified on an Order.

Subject to Clause 10.5, 23.1, 24 and 26 below, for the avoidance of doubt electronic communications shall be deemed to be made in writing.

Any other terms which the Vendor specifies will be of no effect.

## 2. Orders, Quotations and Formation of Contracts

- 2.1 Orders known as "Schedule Agreements" will consist of two parts. Part one will contain but not be limited to the following; the Order number, the Material number, description and price and the terms of business agreement reference. Part two of the Order will contain the schedule requirements for the Material. Part two will be issued periodically by R-R. Each re-issue of a part two Order shall be considered an amendment to the Order.
- 2.2 Where the Vendor issues a quotation to R-R for the supply of Goods or Work then that quotation must be consistent with this Agreement and R-R's request for quotation. The Vendor's quotation will be open for R-R to accept for not less than 60 days.
- 2.3 When the Vendor receives an Order from R-R placed in accordance with the Vendor's quotation a contract ("Contract") will be created. For the avoidance of doubt in the case of Orders made electronically such receipt will be deemed complete at the time the Vendor's authorised user indicates receipt in accordance with the procedure as outlined in R-R's E-Procurement Web Site User Guide as may be amended from time to time.
- 2.4 If the Vendor receives an Order without having issued a quotation then the Vendor may accept the Order by signing and returning the Order acknowledgement slip no more than 14 days from receipt of the Order. If the Vendor does this it will create a Contract subject to this Agreement. For the avoidance of doubt in the case of Orders made electronically such acceptance will be deemed complete at the time the Vendor's authorised user indicates acceptance in accordance with the procedure as outlined in R-R's E-Procurement Web Site User Guide as may be amended from time to time.
- 2.5 Where Orders have been made electronically in accordance with Clause 2.2 or 2.3 above the Vendor shall be responsible for ensuring that such Orders are reviewed and acknowledged without unreasonable delay.

- 2.6 If the Vendor receives a Framework Order from R-R, the value stated on such Framework Order or any subsequent amendment thereto shall in no way represent the value of the work R-R is contractually liable to place with the Vendor. R-R's contractual liability for such Framework Order shall be governed by R-R issuing a requisition on a Framework Order (RFO) in accordance with R-R procedure for Framework Orders as may be amended from time to time. The Vendor agrees to retain records of spend against such Framework Order and agrees not to conduct any further Work if the value stated on such Framework Order would be exceeded.
- 2.7 R-R accepts no liability for orders for Goods or Work that are not placed on an official Order in accordance with this Clause 2.

3. Delivery and Passing of Title

- 3.1 Risk in the Goods will pass to R-R in accordance with the delivery instructions set out on the Order.
- 3.2 Title in the Goods will pass to R-R upon receipt at the destination set out on the Order unless delivery occurs more than 5 days prior to the scheduled delivery date then title shall pass to R-R on the earlier of:
- (i) R-R using the Goods; or
  - (ii) Five days prior to the scheduled delivery date.

4. Conformity with Order

- 4.1 Goods and Work will be supplied strictly in accordance with the Procurement Terms.
- 4.2 If R-R accepts Goods or Work which do not conform to Procurement Terms this will not relieve the Vendor of its obligations to correct any such non-conformance.

4.3 Notwithstanding that R-R may need to instruct changes to the purchase schedule within lead time, or the Vendor may experience delay excusable under this Agreement, recognising that time is of the essence, the Vendor shall take all necessary actions, both normal and extraordinary to ensure timely deliveries.

5. Excusable Delays

The Parties agree that timely performance under an Order shall be a primary obligation of the Vendor, hence the Vendor will only be excused delay in delivery or performance if it can show to R-R's reasonable satisfaction that such delay has been caused by circumstances outside its reasonable control and if it has notified R-R in writing within five (5) days on becoming aware of such circumstances. No Order will terminate as a result of such delay except that R-R may at its discretion terminate an Order in whole or in part where the Vendor is so excused without incurring liability if such delay becomes substantial.

The Vendor shall make all reasonable endeavours to mitigate the effects of such delay.

For the avoidance of doubt, strikes, lockouts or other industrial action or disputes specific to the Vendor and/or its subcontractors or agents shall not constitute an excusable delay.

In any event the Vendor shall notify R-R in writing on becoming aware of any circumstances which may cause any failure to comply with the terms of Clause 4.1.

6. Price and Payment

6.1 The price stated on an Order for any Goods or Work shall be a fixed price inclusive of all duties, levies and taxes in the country of origin of the Goods or Work, excluding value added tax.

- 6.2 Where the Contract requires the Vendor to submit an invoice, the Vendor shall post invoices to R-R's Purchase Accounts Department at the address on the Order on the day on which Goods are despatched or Work is completed.
- 6.3 R-R shall post payment to the Vendor on the last working day of the second month following the month in which the relevant Goods have been delivered or Work completed, provided that the Vendor has supplied such Goods or Work in accordance with the Contract and where the Vendor is required to submit an invoice, such invoice is accurate and was received by R-R's Purchase Accounts Department within 7 days of despatch of Goods or completion of Work.
- 6.4 If R-R does not post payment in accordance with Clause 6.3 above, the Vendor will be entitled to recover a sum from R-R equal to the interest which it pays or loses as the case may be in consequence of such late payment upon provision of evidence of such payment/loss. The amount so recoverable shall not in any event exceed a sum equivalent to interest at 0.6% above the Bank of England's Base Rate on the overdue payment for the period between the dates on which the payment was due and made. For these purposes, the Bank of England's base rate shall be that applicable at the date on which the overdue payment was due. The Parties acknowledge and agree that such payments are sufficient to compensate the Vendor for any such late payment.
- 6.5 The Vendor and R-R shall jointly pursue cost reduction opportunities for the duration of this Agreement and will reflect the achievements of such opportunities in price reductions to R-R.
- 6.6 The Parties shall exchange any information necessary to understand and analyse the Vendor's costs for supplying the Goods and Work.
- 6.7 Without prejudice to R-R's other rights and remedies, R-R may deduct from any payments due to the Vendor under any Contract the amount of any bona fide contra accounts or other claims which R-R may have against the Vendor in connection with that Contract or any other contract.

7. Monitors

On request, the Vendor shall provide information showing the current status of all batches of Goods or Work in comparison to the planned status.

8. R-R Property

8.1 Any items held by the Vendor which R-R has paid for in full or which R-R may have loaned, bailed, consigned or supplied to the Vendor for the execution of an Order will be at the Vendor's risk until delivered to R-R.

8.2 The Vendor shall retain such items in good condition during performance and after completion of an Order and shall not dispose of such items except in accordance with R-R's written instructions nor shall such items be used other than for the purpose of such Order without R-R's prior written consent.

8.3 The Vendor shall ensure that such items are at all times identified as "the property of Rolls-Royce plc" and do not become the subject of any encumbrance.

9. Warranty

9.1 The Vendor warrants to R-R that all Goods or Work delivered hereunder will conform to the Procurement Terms and will be free from defects in material, workmanship and, where the Vendor has responsibility for design, free from defects in design.

9.2 If Goods or Work do not conform with any Procurement Term or are not free from defects, without prejudice to R-R's other rights and remedies the Vendor shall promptly, at the Vendor's own expense, either repair or replace such Goods or rectify any such non-conformity or defects. If the Vendor fails to promptly repair or replace any Goods or Work which do not so conform or which are not so free of defects (hereinafter called "Non-conforming Item"), without prejudice to its other rights and remedies, R-R may (i) choose to keep the Non-conforming Item and R-R shall be entitled to adjust the Order price of such item in a manner that is reasonable under the circumstances or (ii) rectify or arrange to have rectified such Non-Conforming Item and the Vendor shall reimburse R-R for all costs relating to such rectification and for all damages R-R sustains due to the Non-Conforming Item.

9.3 Without prejudice to the generality of Clause 9.1 and/or 9.2 above:

9.3.1 If delivery of the Goods and/ or Work is delayed in respect of the delivery date specified in a Contract, other than for reasons set out in Clause 5 above, the Vendor shall pay R-R liquidated damages to compensate R-R for its internal costs only at the rate of 2.5% (two and a half percent) of the value of the Goods or Work supplied for each complete week of delay up to a maximum of 10% (ten percent) of such value.

9.3.2 for every Vendor liable occurrence of the following incidents the Vendor shall pay R-R liquidated damages in the stated amounts for the purpose of compensating R-R's internal administration efforts only associated with such incident.

<b>Incident</b>	<b>Liquidated Damages</b>
Where R-R rejects a delivery of Goods upon inspection by R-R and before use by R-R	\$560.00
Where R-R gives written authorisation to use or release a Material that does not conform to the specified requirements (Concession)	\$560.00
Where R-R rejects Goods due to non-conformance found during R-R's assembly process	\$720.00
Where R-R rejects Goods due to receipt of a customer complaint and/or a customer rejects Goods	\$880.00
Where R-R raises a "Major Non-Compliance Report" due to a deficiency found during R-R's audit of the Vendors quality management system	\$800.00

The Parties agree that such liquidated damages represent a reasonable pre-estimate of the internal costs that R-R is likely to suffer as a result of such delay and/or incident.

## 10. Termination

10.1 Without prejudice to any of R-R's rights and remedies, R-R may terminate an Order in whole or in part by giving the Vendor notice in writing, identified as a notice of termination, whereupon all work on that Order shall cease.

R-R shall pay the Vendor, in full and final satisfaction of all claims arising out of such termination:

10.1.1 the price of all Goods and Work which the Vendor has justifiably produced and completed in accordance with such terminated Order or part thereof and which R-R has not paid for,

- 10.1.2 the cost of settling any claims for necessary termination of sub-contracts justifiably committed in respect of such terminated Order or part thereof provided the Vendor has included in such sub-contracts a termination for convenience clause in substantially the same terms as this Clause 10.1, and
- 10.1.3 the cost to the Vendor of any justified work-in-progress in respect of such Order or part thereof.

The Vendor shall give R-R every assistance to ascertain the extent of such work-in-progress. The amount payable to the Vendor under this Clause 10.1 will not exceed the total amount that would have been payable to the Vendor for the Goods or Work. In the event of termination the Vendor shall submit notice of its claim within 2 months of termination. Any finished Goods and/or Work and any Work in progress paid for by R-R under this Clause 10.1 will be delivered to R-R or held by the Vendor as R-R property in accordance with Clause 8 above.

- 10.2 If R-R's termination in accordance with Clause 10.1 above is the result of R-R's customer terminating its contract with R-R then payment to the Vendor in full and final satisfaction of any such termination shall be the proportion of the contract value equal to the proportion R-R receives from its customer if any.
- 10.3 If R-R has reasonable grounds for believing the Vendor will be unable to substantially fulfil its obligations, R-R may require the Vendor to provide reasonable written evidence that the Vendor will fulfil its obligations. If the Vendor fails to provide such evidence within 14 days of R-R's request R-R may treat that failure as a material breach and terminate the relevant Order.
- 10.4 R-R shall have the right, without prejudice to its other rights and remedies, to terminate any Order without incurring any liability, if the Vendor: -
  - 10.4.1 makes a general arrangement with its creditors; or,

- 10.4.2 ceases or threatens to cease to carry on its business or a substantial part of it or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof; or,
  - 10.4.3 enters into liquidation whether compulsory or voluntary, except as a solvent company for the purposes of amalgamation or reconstruction; or,
  - 10.4.4 has an administrator or administrative receiver of the whole or part of its assets appointed; or
  - 10.4.5 commits any material breach of any of its obligations under this Agreement or the Order which it fails to rectify within 14 days of written notice of that breach (no notice period shall apply for a breach of delivery terms); or
  - 10.4.6 (not being a company registered in England) carries out or becomes subject to actions or proceedings which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in Clause 10.4.1 and 10.4.2 above.
- 10.5 R-R shall effect termination under this Clause 10 by issuing notice of termination in writing to the Vendor. Such notice will be effective 24 hours after it is issued.
- 10.6 This Agreement shall remain in force for the later of: a period of fifteen (15) years from the effective date, or discharge by the Vendor of all obligations under this Agreement and any Order hereunder.

11. Supply of Assistance, Suggestions and/or Opinions

R-R's personnel may from time to time render assistance and/or give suggestions and/or opinions to, or effect an exchange of, information with the Vendor's personnel concerning the Goods or Work to be furnished under an Order ("Assistance"). However such Assistance shall not grant the Vendor authority to change the relevant Goods or Work or any provisions of an Order or this Agreement, nor shall such Assistance constitute a change binding upon R-R unless issued as an amendment in accordance with this Agreement and the Vendor shall be responsible for the use of any such Assistance. In all cases, and as acknowledged by the Vendor, R-R is relying upon the Vendor's knowledge and expertise in performing all work regarding the Goods or Work to be furnished under an Order.

12. Supply of Personnel

Any personnel which the Vendor provides to carry out the Work will at all times continue to be employed by the Vendor. The Vendor shall ensure that any such personnel will, whilst on R-R's premises, comply with R-R's "General Conditions of Work on Site", copies of which are available on request.

13. Development Work

13.1 If any Work or manufacture of Goods involves research or development that is funded by R-R then all intellectual property rights in the results thereof will vest in R-R.

13.2 All designs, drawings, processes and developments by R-R and all intellectual property rights, copyrights and other proprietary rights (including know-how) supplied by R-R under this Agreement and/or any Order shall remain the sole and undivided property of R-R.

- 13.3 The designs, drawings, processes and developments by the Vendor and all intellectual property rights, copyrights and other proprietary rights (including know-how) arising in connection with the Vendor's performance under this Agreement or an Order are generated by the Vendor in the sole and undivided interest of R-R and are fully compensated by the price paid for Goods and Work under any Order and all intellectual property rights in the results thereof will vest in R-R.
- 13.4 The Vendor shall use such intellectual property only for the purposes of performing its obligations under this Agreement and/or any Order.
- 13.5 The Vendor shall and shall require its employees to sign all papers and do such acts as are reasonably necessary for R-R to pursue formal protection of any anticipated intellectual property rights.

14. Proprietary Rights Liability

If any allegation is made or any claim asserted against R-R, or any person claiming title from or through R-R, that any act done or proposed to be done in relation either to Goods or to any article or material on which Work has been carried out constitutes a violation or infringement of any patent, copyright, registered design or other proprietary right held by a third party, the Vendor shall indemnify R-R against and save R-R harmless from any loss or damage (including without limitation all costs and expenses) arising directly or indirectly out of such allegation or claim unless the allegation or claim is the direct result of the Vendor following a design or process originated and furnished by R-R.

15. Proprietary Information

- 15.1 The Parties agree to exchange drawings, operating or maintenance instructions together with any other technical information in whatever form necessary to execute an Order. Title to any such information will not be affected by any such exchange.

15.2 Subject to Clause 11 any information, including but not limited to that covered by Clause 15.1 above, disclosed by one Party to the other in connection with an Order or a proposed Order shall be treated in confidence and shall not be copied or disclosed to any third party. Disclosure of information shall be strictly limited to those employees of the Party receiving such information to whom disclosure is necessary, or as may be expressly authorised in writing by the disclosing Party. Such information includes this Agreement and its form and content. These provisions do not apply to information which has lawfully entered the public domain.

15.2.1 The Party that has received such information in the form of drawings and/or written material or other recorded form including all copies thereof, shall return to the disclosing Party all information which has been supplied or it has acquired under this Agreement and/or any Order and to delete or have deleted all information stored in computer readable form when so requested by the disclosing Party and in any event on completion of its obligations under such Order.

15.3 Subject to Clause 15.2, if manufacturing data, drawings and any other technical information relating to the subject of an Order are required for any purpose of R-R the Vendor will on request supply the same.

15.4 Subject to Clause 15.2, the Vendor shall protect all intellectual property rights, copyrights and other proprietary rights (including know-how) supplied by R-R under this Agreement and/or any Order which are in the possession of its sub-tier suppliers, sub-contractors and/or agents including without limitation, taking all necessary steps and actions to ensure that any such sub-tier supplier complies with all confidentiality provisions herein. The Vendor shall indemnify and hold R-R harmless in the event of any breach of such provisions by such sub-tier supplier. Furthermore, the Vendor shall notify R-R immediately on becoming aware of a breach or a potential breach and shall inform R-R of what actions it is taking to prevent or remedy such breach or potential breach to ensure risks to R-R are mitigated. R-R reserves the right to take its own action against any such sub-tier supplier and to direct the Vendor to take certain actions.

16. Quality Control Requirements

- 16.1 The Vendor shall inspect and release Goods and Work as directed on an Order.
- 16.2 Notwithstanding Clause 16.1 the Vendor shall be responsible for safe custody and maintenance of all specifications, drawings and other documentation which R-R supplies and which are necessary for the performance of an Order.
- 16.3 The Vendor agrees that R-R shall have the right to enter the Vendor's facilities at reasonable times to inspect the facility, Goods, Work, tooling, materials and property of R-R. Such inspection shall not constitute or imply acceptance of any Goods, Work or materials.

17. R-R Customer Contract Conditions

- 17.1 In order to meet the requirement of the customer, R-R may be required to accept and agree, in its contract with that customer for the sale of engines or parts thereof embodying Goods or the product of Work, sale terms which are not reasonably reflected by the terms of this Agreement ("Sale Terms"). In such event, the Vendor shall negotiate with R-R with the object of accepting an amendment to the terms of this Agreement corresponding to such Sale Terms, in respect of Orders for Goods or Work related to that customer.
- 17.2 Without prejudice to Clause 17.1, if R-R is required to flow down to its Vendors any appropriate regulations or requirements of a Government, the Vendor agrees to accept the inclusion of such regulations or requirements in the relevant Order.

18. Offset/Countertrade

R-R may be obliged to make offset and/or Countertrade arrangements in a particular country with a particular customer under a contract for the sale of R-R products which incorporate Goods or Work.

If R-R so requests, the Vendor shall negotiate with R-R with the object of the Vendor fulfilling a proportion of the total offset obligation equal to the proportion of the price paid by the customer for the products which the Vendor's Goods or Work represent.

19. Exclusion of Agency and Licence

19.1 The Vendor will not do anything that might result in other parties believing that it has authority either to contract on behalf of R-R or is a licensee of R-R.

19.2 In particular and without prejudice to the generality of Clause 19.1 above, the Vendor shall not, without the prior written permission of R-R, manufacture or supply to third parties any Goods or parts of a similar nature to those of R-R's, utilising technical information supplied or derived from R-R. This Agreement shall not include any express or implied licence whatsoever.

20. Publicity

The Vendor shall not refer to R-R's name, the company's trademarks or products in connection with any publicity without the prior written permission of the Commercial Services department at R-R.

21. Waiver

Failure by R-R at any time to enforce any term of this Agreement or any Order Term shall not be construed as waiver by R-R of such term or Order Term.

## 22. Conflict

If there is a conflict of terms the order of precedence shall be: -

- 1 any Government terms associated with a Contract
- 2 the applicable Appendix 3 hereto
- 3 any other Appendix hereto
- 4 this Agreement (excluding appendices)
- 5 terms appearing on the front of an Order other than Government terms

## 23. Assignment and Third Party Rights

23.1 The Vendor shall not assign or transfer any of its rights and obligations under this Agreement or any Contract. Any such purported assignment shall be null and void unless agreed in writing between the Parties.

23.2 This Agreement excludes the provisions of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall be construed as creating any rights in respect of any third parties (including without limitation any employee, officer, representative or sub-contractor of any Party) under, as a result of, or in connection with this Agreement.

## 24. Notices

Any notices or other documents to be served under this Agreement or any Order shall be in writing and addressed to the party to be served at its address given in this Agreement or any other address as may be notified. Such notices may be delivered by hand or sent by fax or recorded delivery post.

## 25. Governing Law

This Agreement and Orders shall be subject to and interpreted in accordance with the Laws of England.

26. Amendment

This Agreement shall not be amended other than by an agreement in writing which is expressly stated to amend this Agreement.

27. English Language

All communications in respect of Orders shall be in English.

28. Headings

The Index and Clause headings used in this Agreement are for convenience only and will not affect the meaning or construction of this Agreement.

29. Survival

29.1 After termination of this Agreement its terms shall continue to apply to any Contract created before such termination.

29.2 The provisions of Clauses 8, 11, 14, 15, 20, 25 and this Clause 29 shall survive any termination of this Agreement.

30. Severability

If any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the Parties from any competent authority, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality.

31. Exclusion of other Provisions and Previous Understandings

The Parties agree that they have not placed any reliance whatsoever on any representations, agreements, statements or understandings made prior to the signature of this Agreement whether orally or in writing relating to the subject of this Agreement other than those expressly incorporated in this Agreement, which have been agreed on the basis that its provisions represent their entire agreement and shall supersede all such prior representations, agreements, statements and understandings.

32. Vendors Ownership

If the Vendor becomes, during the lifetime of this Agreement, subject to full or partial control of, or part of a joint venture with, another company, then R-R shall, without prejudice to its other rights and remedies and without incurring any liability whatsoever, have the right to terminate this Agreement and/or any Order (in whole or in part), after having given the Vendor due notification.

33. Data Protection Act

The Vendor undertakes that, in relation to this Agreement or any Contract, it shall, in respect of all Personal Data provided to it by R-R, comply strictly with all requirements of the Data Protection Act 1998 as if it were the Data Controller of such personal data. The phrases "Personal Data" and "Data Controller" shall bear the meanings attributed to them in the Data Protection Act 1998.

The Vendor shall indemnify R-R against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which R-R may incur arising out of any breach of this Clause 33.

SIGNED

for and on behalf of **ROLLS-ROYCE plc**

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(Signature)

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(Signature)

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(Print Name)

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(Print Name)

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