

# Break

**DEFCON 656**

Edition 03/06

1. The Authority shall, in addition to its power under any other of the Conditions of Contract, have power to determine the Contract at any time by giving to the Contractor written notice, to expire at the end of such period as may be specified in the Contract as the appropriate period for a notice to determine the Contract under this Condition or, if no period be specified, at the end of twenty business days, and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination but subject to the operation of the following provisions of this Condition.

2. In the event of such notice being given the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:

a) to direct the Contractor, where production has not been commenced, to refrain from commencing production;

b) to direct the Contractor to complete in accordance with the Contract all or any of the Articles, or any part or component thereof in course of manufacture at the expiration of the notice and to deliver the same at such time or times as may be mutually agreed on, or, in default of agreement, at the time or times provided by the Contract. All Articles delivered by the Contractor in accordance with such directions and accepted shall be paid for at a fair and reasonable price;

c) to direct that the Contractor shall, as soon as may be reasonably practicable after the receipt of such notice;

i. take such steps as will ensure that the production rate of the Articles and parts and components thereof is reduced as rapidly as possible;

ii. as far as possible, consistent with sub-clause c) i. of this clause, concentrate work on the completion of parts and components already in a partly manufactured state;

iii. determine on the best possible terms such sub-contracts and orders for materials and parts and components bought out in a partly manufactured or wholly manufactured state as have not been completed, observing in this connection any direction given under sub clause b) and sub-clause c)i. and ii. of this clause as far as may be possible.

3. In the event of such notice being given:

a) for Articles;

i. the Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and Articles in course of manufacture in the possession of the Contractor at the expiration of the notice and properly provided by or supplied to the Contractor for the performance of the Contract except such materiel and Articles in course of manufacture as the Contractor shall, with the concurrence of the Authority, elect to retain;

ii. the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of all such unused and undamaged materiel and Articles in course of manufacture liable to be taken over by or previously belonging to the Authority and shall deliver such materiel and Articles in course of manufacture in accordance with the directions of the Authority who shall pay to the Contractor fair and reasonable handling and delivery charges incurred in complying with such directions.

Break

b) for Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed or partially performed in accordance with the Contract;

c) the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract. Provided that in the event of the Contractor not having observed any direction given to him under Clause 2 of this Condition the Authority shall not under this Clause pay any sums in excess of those which the Authority would have paid had the Contractor observed that direction.

4. If in any particular case hardship to the Contractor should arise from the operation of this Condition it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Authority on any matter or thing arising out of this Clause shall be final and conclusive.

5. The Authority shall not in any case be liable to pay under the provisions of the Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total price of the Articles payable under the Contract.

6. The Contractor shall in any sub-contract or order, the value of which is £50,000 or over made or placed by it with any one subcontractor or supplier in connection with or for the purpose of the Contract, take power to determine such subcontract or order under this Condition upon the terms of Clauses 1 to 5 of this Condition save only that:

a) the name of the Contractor shall be substituted for the Authority throughout except in sub-clause 3.a)i. where it last occurs and in Clause 4; and

b) the period of the notice of determination shall be such period as may be specified in the Contract as the appropriate period for a notice to determine a subcontract or order under this Condition, or, if no period be specified, twenty business days; and

c) the Contractor shall not exercise the power taken in those subcontracts until the Authority (that is to say the Secretary of State for Defence) has exercised its power under Clause 1 of this Condition; each of those subcontracts shall restrict the Contractor's right to exercise that power in the manner described in this subclause 6.c) by including in the power "Provided that this power is not exercised unless the main contract has been determined by the Secretary of State pursuant to the provisions of DEFCON 656".

7. Claims for payment under this condition shall be made in accordance with the procedure set out in DEFFORM 43.