

TERMS AND CONDITIONS

FOR PARTICIPATION IN A TEAM AUSTRALIA TRADE MISSION

- A. The Commonwealth of Australia provides assistance to defence companies to market their goods and services overseas. One of the key ways in which it does so is by sponsoring selected defence companies' participation in Team Australia Trade Missions.
- B. The Participant has submitted an application to participate in the Trade Mission subject to acceptance of these terms and conditions.
- C. Should the application be successful, the Participant shall immediately be bound by the following terms and conditions.

TERMS AND CONDITIONS

1. Definitions

In this Agreement, the following terms have the following meanings:

Agreement means these Terms and Conditions.

Commonwealth means the Commonwealth of Australia, as represented by the Defence Materiel Organisation.

Participant means an Australian sole trader, partnership or company who has submitted an application for participation in the Trade Mission and who has been notified that their application has been accepted.

Team Australia means the brand used by the Commonwealth overseas for the purposes of promotion and facilitation of the export of Australian defence products and services.

Trade Mission means the trade mission to Santiago, Chile from 26 March 2012 to 2 April 2012 organised by the Defence Export Unit for the purpose of exploring international business opportunities for Australian defence industry companies.

2. Conditions of Participation

2.1 General Conditions of Participation

- (a) The Participant must, at all times:
 - (i) use their best endeavours to participate in all scheduled briefings, both in Australia and the target market, by the Commonwealth and other agencies; and
 - (ii) keep itself informed of any laws, regulations or government policy that might impede or prevent the Participant from marketing its products or services in any of the countries associated with the Trade Mission.

- (b) At least six weeks prior to the Trade Mission, the Participant must:
- (i) provide the Commonwealth with company information, revised versions of the quad charts provided in the Participant's application (if requested by the Commonwealth) and other marketing materials showcasing the firm's products, services, and technology so as to allow for compilation, printing and advance distribution;
 - (ii) provide to the Commonwealth all required information pertaining to the Trade Mission including, but not limited to, information required for the arrangement of visas, accommodation, and other administrative requirements;
 - (iii) provide to the Commonwealth, the Participant's business objectives for at least one target market associated with the Trade Mission;
 - (iv) have obtained information from the Defence Export Control Organisation as to whether existing laws or regulations might impede or prevent the Participant from marketing its products or services in any of the countries to be visited by the delegation; and
 - (v) have ensured that its staff who will attend the Trade Mission have a valid passport with any necessary visas, and hold and maintain travel and other appropriate insurances in connection with their participation in the Trade Mission.

2.2 Conditions of Participation – During the Event

- (a) During the Trade Mission, the Participant must:
- (i) use their best endeavours to attend all appointments made by the Commonwealth or its agents in support of the Trade Mission program;
 - (ii) use their best endeavours to advise the Commonwealth if the Participant is unable to adhere to the schedule of planned activities at least 48 hours prior to activities scheduled occurrence;
 - (iii) comply with all requirements and directions of the Commonwealth; and
 - (iv) ensure all company staff participating in the activity act professionally and in a manner that does not negatively impact on Team Australia or the delegation's reputation at all times including, but not limited to ensuring that all of the Participant's staff:
 - 1. arrive punctually for all organised appointments; and

2. conduct themselves in a professional manner consistent with the cultural expectations of the country/s in which the Trade Mission is being held.

2.3 Conditions of Participation – After the Event

After the Trade Mission is completed, the Participant must contribute to follow up surveys by reporting and providing the results achieved during the Trade Mission and to further provide the Commonwealth with information relating to contracts secured as a result of the Trade Mission for a period of 24 months after the Trade Mission. Any such information provided to the Commonwealth will be treated as commercial in confidence and not be released in an attributable form without the express permission of the company involved.

3. Withdrawal and Cancellation

3.1 Withdrawal by the Participant

- (a) The Participant may withdraw from the Trade Mission immediately by giving notice in writing to the Commonwealth if:
 - (i) the Participant elects not to participate in the Trade Mission; or
 - (ii) if the Trade Mission is delayed, or does not proceed.
- (b) Withdrawal will not be deemed received until the Participant has received written confirmation of their withdrawal from the Commonwealth.
- (c) The Participant acknowledges that if it withdraws from the Trade Mission in accordance with clause 3.1(a)(i) above within three weeks prior to the commencement of the Trade Mission, the Commonwealth will suffer loss or damage because of the Participant's withdrawal. The Participant further acknowledges that if it withdraws within three weeks prior to the Event, the Commonwealth may exclude the Participant from participating in future trade missions, as previous performance (or non-performance as the case may be) on Trade Missions is one factor in considering applications to attend Trade Missions.

3.2 Cancellation by the Commonwealth

- (a) The Commonwealth may cancel the Participant's participation in the Trade Mission immediately by giving the Participant notice if:
 - (i) the Participant breaches any term of this Agreement or fails to meet any obligation contained in this Agreement and fails to remedy that breach or meet that obligation within 14 days of receiving a notice from the Commonwealth requiring the Participant to remedy the breach or meet that obligation;
 - (ii) the Participant breaches any term of this Agreement which is not capable of being remedied;

- (iii) the Participant goes into liquidation, has a receiver, receiver and manager, administrator or similar person appointed, enters into a scheme of arrangement with creditors or is unable to pay its debts as and when they fall due;
 - (iv) the Participant or any of its personnel are involved in any conduct, activity or situation which has or may harm, damage or diminish the name or reputation, or the goals or objectives of the Participant or the Commonwealth;
 - (v) the Commonwealth determines in its absolute discretion that attendance at the Trade Mission poses an unacceptable risk to person, property or national security;
 - (vi) an insufficient number of Participants can be found to participate in the Trade Mission; or
 - (vii) the Trade Mission is delayed, cancelled or does not proceed.
- (b) If the Commonwealth cancels the Trade Mission in accordance with clause 3.2(a) above, the Participant acknowledges and agrees that the Commonwealth will not be liable to pay compensation, damages or costs to the Participant in respect of the termination.

4. Risk, Insurance and Indemnity

4.1 Acknowledgement of Risk

- (a) The Participant acknowledges that its participation in the Trade Mission may expose it and its representatives to the risk of damage, loss or harm. The Participant acknowledges and agrees that it will not hold the Commonwealth responsible for any damage, loss or harm it suffers as a consequence of its participation in the Trade Mission.
- (b) The Participant acknowledges that it is solely responsible for making itself aware of all relevant information and travel advice available in relation to the country/s where the Trade Mission is taking place, as well as any other countries through which the Participant, its representatives will transit. The Commonwealth strongly recommends that the Participant consider the travel advice issued by the Department of Foreign Affairs and Trade for the country or countries it will be visiting or transiting through (see www.smarttraveller.gov.au).

4.2 Insurance

The Participant must ensure that it takes out appropriate insurance to cover risks which may arise due to the Participant's involvement in the Trade Mission, and that the insurance is maintained at all relevant times. The Participant agrees to provide the Commonwealth upon request with proof of insurance cover.

4.3 Indemnity by the Participant

The Participant indemnifies the Commonwealth and all of its officers, employees and agents against any liability or cost which the Commonwealth or any of its officers, employees and agents incur concerning any claim or action by any person arising from any:

- (a) act or omission by the Participant, including negligence of the Participant, arising from the Participant's participation in the Trade Mission or the performance of the Participant's rights or obligations under this Agreement; or
- (b) breach by the Participant of a term of this Agreement.

5. General

5.1 Force Majeure

The Commonwealth will not be liable to the Participant for any loss suffered, nor be in default under this Agreement, for any delay, failure or interruption resulting directly or indirectly from industrial action, blackouts, fire, war, terrorism, civil or military unrest, explosions, earthquakes, floods, labour disputes, acts of God or any other event or cause beyond the control of the Commonwealth, or if participation in the Trade Mission is adversely impacted by any of the causes nominated in this clause.

5.2 Intellectual Property

- (a) The Participant grants the Commonwealth a non-exclusive, non-transferable and royalty free licence to use the Participant's brand name(s), logo(s) and trademark(s) on any material related to the Trade Mission.
- (b) The Participant grants the Commonwealth the right to use any photographs, video footage or voice recordings of the Participant for official use by the Commonwealth for the purposes of promoting Team Australia and or the activities of the Defence Export Unit.
- (c) The Participant shall indemnify the Commonwealth from and against all claims, liabilities, losses (including fines and penalties), damages and costs arising from any claim, suit or action (including legal costs and expenses on a solicitor and own client basis) arising from reliance on information provided by the Participant for use by the Commonwealth or for any breaches of third party intellectual property.

5.3 Applicable law

This Agreement is governed by the laws of the Australian Capital Territory (ACT). The Participant irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the ACT.

5.4 Severability

If any term, condition, provision or covenant contained in this Agreement is determined to be illegal, void, prohibited, invalid or otherwise unenforceable, it will be severed from these terms and conditions and the remaining terms and conditions will survive and remain in full force and effect.

5.5 Survival on termination

All indemnities survive termination of this Agreement.

5.6 Assignment of rights

The Participant may not assign any of its rights under this Agreement without the Commonwealth's written consent, which will not be unreasonably withheld.