

1911.

NEW ZEALAND.

THE AMMUNITION CONTRACT.

Laid before Parliament pursuant to Section 87 (c) of the Defence Act, 1909.

CONTRACT.

AGREEMENT made the thirty-first day of December, one thousand nine hundred and ten, between His EXCELLENCY THE GOVERNOR OF NEW ZEALAND, of Wellington, in the Dominion of New Zealand (hereinafter with his successors in office called "the Governor"), of the one part, and the COLONIAL AMMUNITION COMPANY (LIMITED), a duly incorporated company carrying on business in the United Kingdom and at Mount Eden, near Auckland, in New Zealand, as manufacturers of small-arms ammunition (hereinafter with its successors and permitted assigns called "the Company"), of the other part.

WHEREAS by deed dated the twenty-third day of May, one thousand nine hundred and five, the Governor, acting under the provisions of the Ammunition-supply Act, 1904, entered into a contract with the Company for the supply by the Company of ammunition to the Government of New Zealand for the term of five years from that date, upon the terms and conditions therein appearing: And whereas the said contract has expired by effluxion of time, and by section 87 of the Defence Act, 1909, it is provided that the Governor may at any time during the last year of the term of the contract enter into a fresh contract with the same or any other contractor for a further term not exceeding five years: And whereas the Company is willing to enter into a fresh contract under section 87 of the Defence Act, 1909, for the supply of such quantities of small-arms ammunition as shall be required by the New Zealand Government upon the terms and conditions hereinafter expressed: Now this deed witnesseth as follows:—

1. The Company hereby agrees with the Governor that the Company will manufacture small-arms ammunition within the Dominion of New Zealand in such quantities and at such monthly or other intervals as may from time to time be ordered by the said Government or its duly appointed officers during a period of five years computed from the first day of January, one thousand nine hundred and eleven (being the term of this contract): Provided that the Company shall not be bound to maintain a monthly supply of more than five hundred and eighty-four thousand (584,000) rounds of .303 service ball ammunition and seventy-five thousand (75,000) rounds of .303 blank ammunition.

2. The Governor will pay to the Company for all ammunition finally delivered under this contract a price equal to the current War Office cost (meaning thereby the current price for the time being paid by the War Office to contractors for similar ammunition in England plus the ordinary Imperial departmental charges upon the same, as packed and delivered at Woolwich), increased by a sum at the rate of seventeen pounds ten shillings (£17 10s.) per centum of the aforesaid current War Office cost to cover the expense of freight, insurance, wharfage, and general charges of delivery in New Zealand. The aforesaid current War Office cost shall be ascertained annually in London as on the twenty-third day of May, one thousand nine hundred and ten, and as on the same day in each year thereafter during the term of this contract, by the High Commissioner for New Zealand in consultation with an expert (such expert being the Inspector of Warlike Stores or some other officer appointed by the High Commissioner in that behalf) and the Company's secretary in London, or some other person appointed by or on behalf of the Company, and the current War Office cost so ascertained shall (increased by the percentage aforesaid) be and be taken to be the price (hereinafter called "the Company's price") to be paid by the Governor to the Company for such ammunition during the ensuing twelve months: Provided that in no case shall the price to be paid to the Company under this contract be less than five pounds ten shillings and sixpence (£5 10s. 6d.) per thousand rounds of .303 service ball ammunition, with an equivalent minimum price for blank ammunition: Provided that in the event of war being declared or commenced between Great Britain and any foreign Power, then during its continuance the High Commissioner for New Zealand, or such expert as may be appointed by him in that behalf, acting in conjunction with any person appointed in that behalf by the Company, may fix and determine a special price (being not less than the then current Company's price) per thousand rounds, and state the time during which such special price shall continue to be paid, and the special price so fixed and determined shall for the time being be in substitution for the Company's price which but for this proviso would be payable.

3. The minimum quantity of ammunition which the Governor shall buy from the Company shall during each year of the term of this contract be four million three hundred thousand (4,300,000) rounds of .303 service ball ammunition, and two hundred and fifty thousand (250,000) rounds of .303 blank ammunition, and the Company binds itself to supply the same in the manner and subject to the conditions of these presents: Provided that if during the term of this contract the Governor intends to make any change in the calibre of the arm with which the New Zealand Defence Forces are now equipped (being the arm for which the aforesaid ammunition is to be supplied) he shall give to the Company eighteen calendar months' notice of such intention, in order to enable the Company to prepare machinery and tools for the manufacture of the same quantity of ammunition per annum for the new arm; and from the date of the expiry of such notice, or from such other date as the parties hereto may by memorandum in writing appoint, the ammunition to be supplied by the Company during the residue of the term of this contract shall be ammunition for the new arm as specified in such notice, in lieu of ammunition for the present arm as hereinbefore specified, and the provisions of this contract shall operate and be construed accordingly: Provided further that such notice shall not be given after the expiry of the second year of the said term.

4. The Company agrees to purchase and take from the Governor, and the Governor agrees to supply to the Company from time to time as reasonably required, all powder, cordite, and other explosives required for the manufacture of all ammunition under this contract at the actual cost thereof to the Government, delivered at the Mount Eden Magazine, near Auckland; and the Company shall bear and pay all costs and all loss and risks by damage or deterioration in respect of the said powder, cordite, and other explosives (except destruction by explosion) whilst stored by the said Government prior to the delivery as aforesaid.

5. Before the Governor shall be required to accept the final delivery of any ammunition under this contract he shall be entitled to have the same tested by a Government official appointed by him from time to time for that purpose, and the Governor shall be deemed to have taken final delivery of any instalment or portion of the said ammunition when (but not until) the required tests have been carried out and the ammunition has been finally approved by a certificate in writing to that effect from the said official: such tests to be carried out and completed within reasonable time after delivery of the ammunition to the Government Magazine at Mount Eden, near Auckland.

6. All ammunition to be supplied under this contract, and the materials employed in the manufacture thereof, shall be according to the specifications for the time being issued by His Majesty's War Office for the same class of ammunition, and shall be subject to the same tests as ammunition being supplied to the British Government by contractors for the use of His Majesty's Imperial Forces.

7. All tests of ammunition to be supplied under this contract shall be carried out in Auckland.

8. The Governor shall bear the expense of all aforesaid tests of ammunition, except in respect of such tests as result in the rejection of any lot of ammunition.

9. The official representing the Governor as aforesaid shall have the power to reject any ammunition which shall be found not to comply with the specifications aforesaid for such class of ammunition, or not to satisfactorily fulfil the aforesaid tests, and ammunition so rejected shall not be paid for.

10. The Company shall be entitled to be represented by a duly authorized official of the Company when ammunition is being examined or tested as hereinbefore provided, and the said testing official shall and will for this purpose give due notice to the Company or its representatives in New Zealand of the intention to hold such examination and testing from time to time.

11. In case the ammunition supplied or any part thereof aforesaid is rejected, and is not replaced with ammunition fulfilling the required tests and conditions within a period of three months from the service of notice in this behalf on the Company or its representatives in New Zealand, the Governor shall have the right of purchasing the same quantity of ammunition elsewhere, and any extra cost or expense thereby incurred shall be paid by the Company.

12. The ammunition shall be made up in packages containing ten rounds each, and the Company shall mark all cartridges, and the wrappers or boxes or cases in which such cartridges are packed, in any manner that may be required by the Governor.

13. The Governor or any person duly appointed by him shall at all times have the right of entry to the Company's works to view the ammunition in the course of manufacture, and also the plant, machinery, and material used in the manufacture of the said ammunition.

14. The Company shall not nor will assign or sublet this contract or any part thereof without the consent in writing of the Governor first had and obtained.

15. In case the Company fails to execute any order for ammunition at the time and in the manner provided for by this contract (whether ordinary supply under the foregoing provisions hereof or special supply under clause twenty (20) hereof), or in case the Company assigns or sublets this contract or any part thereof without the consent in writing of the Governor first being obtained, or in case the Company fails in the observance or performance of any of the provisions or conditions to be observed or performed by the Company contained in clauses four (4) and eleven (11) of this contract, or in case an order is made or an effective resolution passed for the winding-up of the Company, then and in any such case it shall be lawful for the Governor, by writing under his hand, to cancel this contract, and thereupon this contract shall be cancelled and all sums of money then due or accruing to the Company from the Government under this contract shall be forfeited: Provided always that if such failure is proved to the satisfaction of the Governor to have been caused by unforeseen circumstances over which the Company could have no control, the Governor may rescind such notice of cancellation if given, or withhold the giving of such notice, upon such terms as he thinks just and equitable: Provided further that if the Company commits any breach of any provision or condition of this contract other than those in this clause hereinbefore specifically mentioned, then the Company shall pay to the Governor as liquidated damages for the first breach of any such provision or condition the

sum of fifty pounds (£50), for any second breach of such provision or condition the sum of one hundred pounds (£100), and should the Company commit any third breach of such provision or condition, then the Governor may cancel this contract in manner hereinbefore provided.

16. The Governor will pay for each lot of ammunition finally delivered under this contract within one month from the date of such delivery.

17. The Company shall during the continuance of this contract be allowed free of charge the use of any empty boxes or cases which in the opinion of the Minister of Defence may at any time be available in the Magazine or stores of the Defence Department of New Zealand suitable for the delivery of cartridges under this contract, such boxes or cases to be removed from the Magazine and stores of the Defence Department to the works of the Company by the Company at its own expense.

18. The New Zealand Customs duty paid by the Company during the continuance of this contract on machinery and stores *bona fide* imported into New Zealand by the Company for the purposes of this contract shall be refunded to the Company by the Governor upon his being satisfied, in the case of stores, that they have been used solely in the carrying-out of this contract, and, in the case of machinery, that it has been in position in the Company's works for at least one month and has been *bona fide* used for the purposes of this contract. And it is hereby agreed and declared that if and whenever machinery or stores in respect of which the duty has been refunded are used for any other purpose outside the Company's works than the carrying-out of this contract, the full amount refunded shall be forthwith paid by the Company to the Crown: Provided that in the case of machinery which, after having been partially used, is sold or disposed of, the amount so payable shall be such proportion of the full duty refunded as the Collector of Customs at Auckland may fix, having regard to the then value of the machinery and the purposes for which it is capable of being used.

19. The Company shall not import into New Zealand or erect in its works after the date hereof any machinery for the purpose of carrying out this contract without the written consent of the Governor first had and obtained.

20. If at any time or times during the continuance of this contract the Governor requires any special supply of small-arms ammunition in excess of the quantity which under the foregoing provisions the Company would be bound to supply, he shall give an order to the Company specifying the quantity required and the time within which the same is to be delivered. If within seven days after receipt of such order the Company gives written notice to the Governor that it is able to execute the order within the required time, the Company shall be deemed to have accepted the same, and shall be bound to supply the ammunition in terms of the order at the same price, subject to the same conditions in all respects as in the case of ammunition to be supplied under the other provisions of this contract. If such notice is not duly given as aforesaid the Company shall be deemed to have declined the order, and the Governor shall have the right to procure the special supply from the Imperial military authorities, in such manner and on such terms as he thinks fit, or to invite tenders from other sources for the same, the Company being in the latter case allowed at the same time to submit its tender.

21. The Governor on his part will at all times during the continuance of this contract keep a reserve store of powder, cordite, and other explosives sufficient to enable the Company to commence and continue to manufacture four million three hundred thousand (4,300,000) rounds of .303 ammunition, and will (in terms of clause four (4) hereof) supply the same to the Company from time to time so as to enable it to perform its part of the contract, and the Company on its part will at all times during the continuance of this contract store and keep in stock a sufficient quantity of all other materials necessary to enable it to commence and continue to manufacture such four million three hundred thousand (4,300,000) rounds: Provided that if the Governor desires to change the pattern of the cartridges to be supplied by the Company to the Governor under this contract the Governor shall give to the Company eighteen calendar months' notice in writing of such intended change before the Company shall be required to deliver to the Governor under this contract cartridges of such new pattern, and if such change of pattern will in the opinion of the Company render useless or unsuitable the materials which the Company has in compliance with this clause to keep in stock to manufacture the said four million three hundred thousand (4,300,000) rounds as aforesaid, then the Company may during the last six months of such notice (but no longer) reduce the quantity of such materials it has so to keep in stock to an amount sufficient to manufacture two million one hundred and fifty thousand (2,150,000) rounds: Provided further that after the expiration of the said last six months the quantity of material to be kept in stock shall be as hereinbefore provided, and shall apply to material for the cartridges of the new pattern.

22. The Company will at its works in New Zealand maintain a plant and machinery in good order sufficient to manufacture seven million (7,000,000) rounds of .303 ammunition per annum during the term of this contract.

23. Upon giving six calendar months' previous notice to the Company of his intention so to do, the Governor may at any time during the term of this contract purchase as a going concern the whole of the works, plant, and stock-in-trade of the Company in New Zealand, including goodwill, and including also the Company's estate and interest in the land on which its factory or works are erected (all of which are hereinafter referred to as "the Company's works"), at the fair value thereof to be ascertained by arbitration under the provisions of the Arbitration Act, 1908: Provided always that the reference shall be deemed to be two arbitrators (one to be appointed by the Governor and the other by the Company) and an umpire to be appointed by the arbitrators before proceeding with the reference: And provided further that if in the course of the arbitration proceedings any question arises as to what is or is not included in the Company's works, either party may require the same to be settled by the Supreme Court. In ascertaining the value as aforesaid of the Company's works the value of the Company's buildings and erections shall be included, but not the value of any leasehold interest then held by the Company from the Crown in the land on which such buildings and erections stand.

24. If the aforesaid right of purchase is exercised, the Company shall also sell and the Governor shall buy at a fair value, to be fixed by arbitration as aforesaid, the whole stock of ammunition of all kinds, and all raw materials, and all material in process of manufacture then on the Company's works or actually at sea or in transit thereto and belonging to the Company.

25. If the aforesaid right of purchase is exercised, then on the completion of the purchase this contract shall be deemed to be determined, and in the meantime the Company shall at all times keep and maintain its buildings, machinery, plant, and appliances in good and substantial order, repair, and condition, and carry on its manufactory, works, and business in a proper and businesslike manner as a going concern.

26. The Governor will as far as possible and as far as is permissible by law give preference to the Company in entering into a new contract at or before the expiration of the term of this contract by effluxion of time.

27. The term of this contract shall be for five years from the first day of January, one thousand nine hundred and eleven, being the limit of time fixed by section 87 of the Defence Act, 1909, under which this contract is entered into: Provided always that the Governor may, upon giving to the Company one month's notice of his intention so to do, determine this contract on the thirty-first day of December, one thousand nine hundred and eleven.

28. The Company is represented in New Zealand by its manager and attorney, Cecil Arthur Whitney, whose address is at the office of the Colonial Ammunition Company (Limited), Auckland. Any change in the appointment of the Company's representatives shall be forthwith notified to the Governor, and any notice or direction to be given by the Governor under this contract, or any writ or other process requiring to be served on the Company, shall be deemed to have been duly given or served if the same is delivered to or served upon the representative for the time being of the Company in New Zealand, or left at the office of the Colonial Ammunition Company (Limited), Auckland, New Zealand, or at the last known address of such representative as aforesaid.

29. The term "Governor" where used herein shall mean His Excellency the Governor of the Dominion of New Zealand for the time being appointed, and includes any Acting or Deputy Governor temporarily appointed or acting during the Governor's absence; and the term "Company" shall include the successors and permitted assigns of the Company.

30. The term "small-arms ammunition" or "ammunition" shall mean and include ammunition for rifles and carbines and machine-guns of rifle calibre.

31. All moneys payable by the Governor under these presents shall be payable out of moneys to be appropriated by Parliament.

32. All or any of the powers conferred on the Governor or on the Government by these presents may be exercised by the Minister of Defence.

In witness whereof these presents have been executed by the parties hereto the day and year first before written.

Signed by His Excellency the Governor for and on behalf of
His Majesty the King, and sealed with the Public Seal
of New Zealand in the presence of—

ISLINGTON.

ARTHUR GUISE,

Private Secretary, Government House, Wellington.

(Sealed.)

THE COLONIAL AMMUNITION COMPANY (LIMITED),

By its Attorney,

CECIL ARTHUR WHITNEY.

Executed by the said the Colonial Ammunition Company
(Limited), by its Attorney, Cecil Arthur Whitney, in the
presence of—

(Sealed.)

S. HESKETH,

Notary Public, Auckland, N.Z.

I, CECIL ARTHUR WHITNEY, of Auckland, in the Dominion of New Zealand, gentleman, do solemnly and sincerely declare as follows:—

1. I am the duly appointed attorney of the Colonial Ammunition Company (Limited) under and by virtue of a certain power of attorney under its common seal dated the first day of May, one thousand eight hundred and ninety-five, and deposited as Number 133 in the Supreme Court at Auckland.

2. I have not received any notice or information of the winding-up of the said Company or of the revocation by any other means of the said power of attorney.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Justice of the Peace Act, 1908.

Declared at Auckland, New Zealand, this thirty-first day of
December, one thousand nine hundred and ten, be-
fore me—

CECIL ARTHUR WHITNEY.

S. HESKETH,

Notary Public, Auckland, N.Z.,

and a Solicitor of the Supreme Court of New Zealand.

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