

1915.
NEW ZEALAND.

THE AMMUNITION CONTRACT, 1915.

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

AGREEMENT made the eighteenth day of May One thousand nine hundred and fifteen BETWEEN HIS EXCELLENCY THE GOVERNOR of 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 Memorandum of Agreement dated the thirty-first day of December One thousand nine hundred and ten the Governor acting under the provisions of the Defence Act 1909 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 the first day of January One thousand nine hundred and eleven upon the terms and conditions therein appearing AND WHEREAS the said Contract will expire by effluxion of time on the thirty-first day of December One thousand nine hundred and fifteen AND WHEREAS by section 87 of the Defence Act 1909 as amended by the Defence Amendment Act 1914 it is provided that the Governor may at any time within two years of the expiry of the term of the Contract enter into a fresh Contract with the same or any other contractor for a further term not exceeding fifteen years AND WHEREAS the Company is willing to enter into a fresh Contract under section 87 of the Defence Act 1909 as amended by the Defence Amendment Act 1914 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 AGREEMENT 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 fifteen years computed from the first day of January One thousand nine hundred and sixteen (being the term of this Contract) provided that the Company shall not be bound to maintain a monthly supply of more than Eight hundred thousand (800,000) rounds of .303 service ball ammunition and One hundred and five thousand (105,000) 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 His Majesty's 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 Fifteen pounds (£15 0s. 0d.) 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 first day of January One thousand nine hundred and sixteen and as on the first day of January 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 fifteen shillings (£5 15s. 0d.) per thousand rounds of .303 service ball ammunition and the minimum price for .303 blank shall not be less than Three pounds two shillings and sixpence (£3 2s. 6d.) per thousand rounds 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 Nine million six hundred thousand (9,600,000) rounds of .303 service ball ammunition and One million two hundred and fifty thousand 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 two years' 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 seventh year of the said term of fifteen years.

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.

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 such 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 a 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 Official representing the Governor 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 the base of all the cartridges with the Company's trade-mark and R.L. mark of cartridges *i.e.* Mark VI unless a change in ammunition is made during the term of Contract in which case the mark of the new cartridge shall be substituted for Mark VI. The wrappers or boxes or cases in which such cartridges are packed shall be marked in any manner that may be required by the Governor.

13. The Governor or an officer duly appointed by him shall during working-hours have the right of entry to the Company's Works.

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 20 hereof) or in case the Company assigns or sublets this Contract or any part thereof without the consent in writing of the Governor being first 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) of 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 ball or blank 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 use in the manufacture of ammunition shall on application be refunded to the Company by the Governor When applying for a refund the Company must submit the Collector of Customs' official receipt for all or any duty paid by the Company.

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 Nine million six hundred thousand (9,600,000) 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 Nine million six hundred thousand (9,600,000) 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 two years' 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 Nine million six hundred thousand (9,600,000) 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 Four million eight hundred thousand (4,800,000) rounds PROVIDED further that after the expiration of the said last six months the quantity of materials 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 shall at its Works in New Zealand maintain a plant and machinery in good order sufficient to manufacture double the minimum ordinary supply of .303 ammunition per annum as specified in clause 3 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 the factory or works are erected (all of which are hereinafter referred to as "the Company's Works") at the fair value hereof to be ascertained by arbitration under the provisions of the Arbitration Act 1908 PROVIDED ALWAYS that the reference shall be deemed to be to 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 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 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 work 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 fifteen years from the first day of January One thousand nine hundred and sixteen being the limit of time fixed by section 87 of the Defence Act 1909 as amended by the Defence Amendment Act 1914 under which this Contract is entered into PROVIDED ALWAYS that the Governor may upon giving to the Company six months' notice of his intention so to do determine the Contract on the thirty-first day of December One thousand nine hundred and sixteen.

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 representative 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 all ammunition for rifles and carbines and machine guns of rifle calibre.

31. 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 for the time being.

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—

Gavin M. Hamilton, Private Secretary,
Government House, New Zealand.

[SEAL.]

LIVERPOOL, Governor.

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

H. H. Ostler, Solicitor, Auckland.

THE COLONIAL AMMUNITION CO. LTD.

By its Attorney
Cecil Arthur Whitney.

(D. 6/59.)

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