

Message

**From:** McGinn, Hayley (CCHQ) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B39F7831F3D74ABD968096AF2AD949EB-CCHQHMCINN]  
**on behalf of** Down, James (CCHQ) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A426F895BBB74C78A9F5FC69DD68CF0C-DOWN, JAMES]  
**Sent:** 06/08/2024 9:12:37 AM  
**To:** Jones, Adam (CDCA) [adam.jones@smiths.com]  
**Subject:** FW: EXTERNAL: Warranties & Liability

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**From:** Down, James (CCHQ)  
**Sent:** Wednesday, April 1, 2020 11:16 PM  
**To:** Fagge, Julian (CCHQ) <Julian.Fagge@smiths.com>; Mortensen, James (CCHQ) <james.mortensen@smiths.com>; Rowlands, Melanie (CCHQ) <melanie.rowlands@smiths.com>  
**Subject:** RE: EXTERNAL: Warranties & Liability

Mel, Julian, James

See below from the Cabinet Office on indemnification. I have held off sending an immediate response to NR, but it's a huge departure from the broad indemnity that had been requested (and initially promised) so I don't think we can be operating under any assumptions that this is going to be risk free.

As such, we will need to push back strongly with the government and I know the consortium will share that view, not least because otherwise it opens us up to lots of difficult discussions and complexity between the consortium members and may create more factions.

We will try to cut through it tomorrow, but I wanted you to at least be aware of the discussions that will likely be going on in the background, particularly as my concern is that, based on some grumblings on calls today, it may even impact certain parties' willingness to commit if they have a big risk exposure.

I'll keep you updated tomorrow.

James

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**From:** Name Redacted <[NameRedacted@cabinetoffice.gov.uk](mailto:NameRedacted@cabinetoffice.gov.uk)>  
**Sent:** Wednesday, April 1, 2020 8:21 PM  
**To:** Fagge, Julian (CCHQ) <Julian.Fagge@smiths.com>; Down, James (CCHQ) <James.Down@smiths.com> Name  
Name <[NameRedacted@cabinetoffice.gov.uk](mailto:NameRedacted@cabinetoffice.gov.uk)>; david cotton <[David.Cotton@PACONSULTING.COM](mailto:David.Cotton@PACONSULTING.COM)>; Mark Brett <[Mark.Brett@paconsulting.com](mailto:Mark.Brett@paconsulting.com)>  
**Subject:** EXTERNAL: Warranties & Liability

**CAUTION:** This email came from outside Smiths Group. Be cautious with the contents unless you can confirm the sender is genuine.

Hi James,

As discussed on the phone today we have been working with legal in respect of the liabilities requested by Smiths and the Consortium. Below are the key principles which have been proposed by the Cabinet Office for your review.

Kind regards

Name Redacted

Smiths Medical Limited (Smiths)

- We have issued a set of terms and conditions for the direct purchase of ventilators to you. This is a goods-only contract ie no services required.
- The design of the product is yours and it is a CE-marked product. As such we would expect you to stand behind the IPR provisions in clause 17 and the indemnity in clause 18 generally but particularly at 18.1.3.
- We would expect you to stand by the warranties in the contract but particularly those in clauses:
  - o 16.1.20 – the Goods to be suitable for the purposes referred to in the Specification, being of satisfactory quality and fit for their intended purpose; but also
  - o 16.1.21 where the Goods are manufactured with reasonable skill and care.
- We recognise that as you will not be the manufacturers of the products in the current situation you may wish to flow down these warranties in the contractual arrangements you reach with the Consortium. Nevertheless as the Cabinet Office will be contracting directly with you and not with the Consortium, the warranties will remain in our contract with you.

The Consortium

- We would expect to receive warranties as to fitness for purpose and workmanship in line with the provisions set out in the contract with Smiths, to include those provisions in clauses 16.1.20 and 16.1.21. Such warranties would be flowed down to you in the sub-contracting arrangement that Smiths have with you.
- We would enter into a side letter with you where we would expect to see a repeat of the warranties relating to fitness for purpose and workmanship.
- We recognise that you the Consortium are being asked to manufacture ventilators, albeit of a tried and tested design, at speed without the rigorous approvals process for the manufacturing process that would require sign-off from the MHRA. As such Cabinet Office will indemnify you, in the side letter, for third party liabilities suffered by the Consortium where such third party liabilities arose as a result of the use of ventilators manufactured in compliance with an accelerated or abbreviated approvals process followed by the MHRA in order to authorise you as a manufacturer of such ventilators, rather than the equivalent full approval process that would normally be required.
- The indemnity referred to above would be carved out to the extent that the third party liabilities arise due to the Consortium manufacturing ventilators which do not comply with the specification or as a result of defects in materials or workmanship, ie to the extent of the warranties given.

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		<p><b>Name Redacted</b>          Commercial Specialist          Complex Transactions Team  <b>I&amp;S</b>  <a href="#">1 Horse Guards Road, London, SW1A 2HQ</a>          Follow us on Twitter @cabinetofficeuk</p>
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