

DRAFT CONTRACT

SCOPE OF CONTRACT: Supply of Mortar Spare-parts and Tooling equipment.

The Contractor represents that he operates as ☐ an individual ☐ a non-profit organization
☐ a corporation incorporated in

The Contractor agrees to deliver all the materiel set forth in the list of items attached to the Terms and Conditions for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the Terms and Conditions and the General Provisions. To the extent of any inconsistency between the Terms and Conditions or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Terms and Conditions and the General Provisions shall control. To the extent of any inconsistency between the Terms and Conditions and the General Provisions, the Terms and Conditions shall control.

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This contract consists of:

- Terms and Conditions containing 28 Parts
- NSPA General Provisions for Fixed Price Contracts (Materiel)
- Termination for Convenience of NSPA
- NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194
- List of items
- Annex 1: NLSE Digest for contractors – Version 7 , 9 July 2007 for information purpose

all of which are hereby made a part of the contract and incorporated herein by reference.

The following documents are available in the Internet under:

www.nspa.nato.int/en/organization/procurement/rules.htm

- **NSPA General Provisions for Fixed-Price Contracts (Materiel)**

www.nspa.nato.int/en/organization/procurement/forms.htm

- **Termination for Convenience of NSPA**
- **NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194 with relevant distribution instructions**

If you have no Internet access, please contact the undersigned and a printed copy of these documents will be forwarded to you.

TERMS AND CONDITIONS

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Part 1 - Materiel to be furnished

1. The Contractor will supply to the NATO Support and Procurement Agency the materiel described and priced in the attached “List of Items”.
2. The prices include all costs in respect of identification, preservation, packaging, packing, marking, quality assurance and inspection incurred by the Contractor.
3. Condition of materiel must be **new of current production**.

Part 2 - Requirements forecast

There is no firm commitment from NSPA to order any of the materiel included in the contract.

Part 3 - Validity of Contract

1. The contract shall be effective for the period commencing with the effective date indicated on page one of the contract and shall be valid for a period of 3 years.
2. NSPA reserves the unilateral right to extend the contract for either one (1) further period of two (2) years or two (2) further periods of one (1) year at the prices agreed per Part 8 below with the issue of a Change Order to this contract three (3) months prior to its expiration date.

Part 4 - NLSE System

1. This is a Contract within the NLSE (NATO Logistics Stock Exchange) System. All Call Orders will be made through and by the NLSE system as will be Order Progression and Financial Settlement. A brief description of the NLSE system is provided as Annex 1: NLSE Digest for Contractors attached to this contract. This Annex 1 is furnished to provide background information only and does not form a part of the terms and conditions of this Contract.
2. In order to allow the efficient use of the NLSE system, NSPA shall provide the Contractor, immediately after receipt of a counter-signed contract with his login ID and password, a detailed User Manual and Training of the initial operators, without any costs to the Contractor.
3. The terms and conditions of this contract will be published in NLSE.

Part 5 - Call Orders

1. All items to be delivered by the Contractor under the contract shall be ordered via the NATO Logistics Stock Exchange (NLSE) system located on the World Wide Web at <https://eportal.nspa.nato.int/>
2. Call Orders shall be received electronically and shall set forth:
 - The materiel to be delivered
 - The quantities
 - The unit prices and total prices
 - The delivery dates in accordance with the list of items.
 - Ordering Armed Force
 - Remarks may include shipping instructions or contact information from the ordering Armed Force.
 - Place of delivery
3. The terms and conditions, as well as the fixed prices set forth herein shall govern all Call Orders issued against this contract.
4. No Call Order will be issued beyond the period of the contract. In case of Call Orders which have been issued but are not completed prior to the expiration of the contract, their processing will continue until completion, at the terms and conditions specified herein or in the relevant Call Order(s), unless otherwise notified by NSPA.
5. **NOTE:** As this contract is for fire arms spares, NSPA in accordance with applicable regulations must ensure that the equipment are for the exclusive use of forces of the ordering NATO member nation or ordering COMMIT Partnership Associated State and that they are not intended for, nor will they be, resold, diverted, transferred, transshipped, or otherwise disposed of any other than NATO member nation or ordering COMMIT Partnership Associated States, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the Government Authorities of the country of origin.
6. **SPECIFICS FOR WEAPON SPARES:** The contractor shall NOT ACCEPT any order in eCat1 without having received an original End User Certificate **via NSPA**

Part 6 - Ordering Procedure and Contractor's Liabilities

Call Orders are issued using the automated procedure set out in Annex 1: NLSE Digest for Contractors. In addition, the following shall apply:

Confidentiality: The Parties agree to hold all messages, transactions and data provided through the system in confidence and not to divulge such information to third parties

Virus Control: Each Party shall operate at all times a virus control check for all interchange of messages.

Part 7 - NSPA Liability

The liability of NSPA is limited to providing a functional electronic system (NLSE) to facilitate the execution of the Call Orders and their financial settlement (Part 4).

Part 8 - Prices

- The prices of this contract are firm fixed prices. If NSPA exercises the option to extend the contract by one or two years, the prices shall be revised by application of the following price revision formula:

$P_{4/5} = P_o (0.2 + 0.8 \times S_{4/5} / S_o)$, where:

0,2	20% fixed portion not subject to revision
$P_{4/5}$	price(s) for optional years 4 resp. 5
P_o	Firm fixed prices established in the Terms and conditions for the initial three contract years.
S_o	Applicable Labour Wage Index as published by the National Statistics Bureau for workers of the applicable industry for the month of (Index source and date to be indicated at time of award)
S_4	Index as described above for the month of (to be indicated at time of award)
S_5	Index as described above for the month of (to be indicated at time of award)

Price revision will be effective four (4) weeks after the date of receipt of the indices above as furnished by the Contractor and will not be applied retroactively.

- In case the price validity of an item has expired due to supplier failure to provide a timely update (Part 3 - Validity of Contract refers), the previous unit price of this item will remain valid in the system until the updated one has been received and approved by NSPA.

Part 9 - Pricing Warrant

The Contractor warrants that the prices included in this contract are for comparable quantities, terms and conditions equal to or less than those proposed or that would be proposed to the Contractor's most favored customer, including any other international organization or NATO member state government bodies.

Part 10 - Taxes and Duties

Clause 6. "Taxes and Duties" of the NSPA General Provisions for Fixed- Price Contracts (Materiel) is amended as follows:

If not located in Luxembourg, the Contractor is specifically responsible for obtaining any documentation required to permit NSPA and its Customers to benefit from the fiscal regime applicable to exports.

NSPA is specifically exempt from all duties and taxes (and this includes Value Added Tax within the European Union). For the purchase of materiel in countries within the European Union, the Contractor may use the form attached hereto entitled " VAT AND/OR EXCISE DUTY EXEMPTION CERTIFICATE (*)/(Directive 2006/112/EC - Article 151 and Directive 2008/118/EC - Article 13)". This form will be signed and stamped by a NSPA official for completion and processing by the Contractor as may be required by the national authorities concerned.

Contractors should note that NSPA has **no** VAT number and **no** VAT identification number

Luxembourg contractors are invited to note the special provisions for Luxembourg contained in the footnote to Taxes and Duties and Duties Clause of the NSPA General Provisions.

Part 11 - Point of Delivery and Passage of Title

1. The Contractor will deliver the materiel:

(Will be completed at time of award)

2. Title to the materiel will pass at the point of delivery specified in the above paragraph. Claims based on latent defects, fraud, gross negligence, or such gross mistakes to amount to fraud, shall not be prejudiced thereby nor shall the guarantees applicable to the materiel or issuance of discrepancy reports be affected by the said passage of title or acceptance of the materiel.

Part 12 - Contractor Notice Regarding Late Delivery

In the event that the Contractor encounters difficulty in meeting the time limits specified for any delivery, he shall immediately notify NSPA in writing, giving pertinent details. However, this data shall be for information only and shall not be construed as a waiver by NSPA of any time limit or of any rights or remedies provided for under this contract an/or any purchase order released against this contract.

Part 13 - Invoicing and Payment

1. Invoicing is automated and shall be done in accordance with the automated NLSE System as described in Annex 1: NLSE Digest for Contractors. All payments are recoverable in the case of non-performance. NSPA shall withhold payment, or recover payments already made, in the case that the Contractor fails to complete a Call Order to the satisfaction of NSPA or the Armed Force. The granting of payments shall not diminish the Contractors responsibility for completing the work to the satisfaction of NSPA or the Armed Force.

2. Payment

- a. NSPA will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.
- b. The most efficient method of payment (and NSPA's preferred method) is by electronic funds transfer (EFT). NSPA payments will be made to the bank account that the Contractor will indicate in the NLSE (NATO Logistics Stock Exchange) system when he uploads his invoices in this system. NSPA will only accept to make payments on an account in a bank located in a NATO Nation or in the Contractor's country

The Contractor is requested to specify the following information:

- i. Full name and address of banker(s)
- ii. Detailed bank account information as follows:
 - For EU countries: IBAN code plus BIC
 - For USA: bank account number(s) + ABA code (or SWIFT code)
 - For Canada: bank account number(s) + bank code (5 digits) and branch code (3 digits)For any other country: bank account number(s) plus any country-specific codes, if applicable.

3. Submission of evidence of delivery and invoice

- a. If the Contractor ships the materiel to the final destination, the only acceptable evidence of delivery shall be a document bearing proof of the transportation charges paid by the Contractor.
- b. If not shipped by the Contractor, the only acceptable evidence of delivery shall be a receipt document signed by the authorized Shipping Agent or his duly designated representative. The receipt document must clearly indicate the authorized Shipping Agent's name and address, the printed name of the Shipping Agent's Representative and his signature for the receipt of the materiel
- c. Payments are normally processed within 15 days as of the date the Contractor enters the status "Shipped" in NLSE and submission of an invoice. The Contractor can either generate his invoice in NLSE by entering a date and a company invoice number in the corresponding field or by uploading his invoice in NLSE as described in the Supplier Manual. The Contractor can also opt to send his invoice separately to NSPA.
- d. All documents may be submitted electronically.
- e. If NSPA does not receive an evidence of delivery during the 15 days period as of the date the Contractor enters the status "Shipped" in NLSE, NSPA might have to delay the payment until receipt of the document or materiel.

Part 14 - Liquidated Damages

1. If the Contractor fails to deliver within the time specified in any purchase order, he shall pay NSPA liquidated damages at the rate of 1 % for each full week of such delay but not more than a total of 10 % of the total price of the materiel not delivered on time.
2. Without prejudice to the final decision regarding the liquidated damages, NSPA shall be entitled to deduct imposed liquidated damages when paying invoices, even in the event that claims deriving from submitted invoices have been assigned or otherwise transferred to third parties. The total of the deductions made by NSPA pursuant to this Part will be considered as full and final satisfaction of all claims received out of late delivery of any item.
3. During a period of one year after delivery and acceptance of the items, NSPA shall have the right to claim liquidated damages even if such right is not reserved at the time when delivery is accepted.
4. The liquidated damages will not apply if the Contractor's failure to perform is due to causes beyond his control and without his fault or negligence.
5. Such causes may include but are not limited to: Acts of God or of the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and failure of subcontractors to perform due to such causes. If the Contractor is responsible for obtaining necessary export licenses / permits / DSP forms, he has to ensure that such requests are made in a timely manner so as to not delay shipment. Failure to do so will NOT be considered Force Majeure.
6. The foregoing provisions of this part apply only to delinquencies in deliveries and do not prejudice NSPA's rights under the provisions of the clause entitled "Default" of the General Provisions for Fixed Price Contracts (Materiel).

Part 15 - Quality Assurance Requirements

1. The Contractor is responsible for maintaining effective control of the quality of materiel. If the Contractor himself is not the manufacturer of the contracted materiel, he shall impose these quality requirements upon his subcontractor.
2. The Contractor must provide a COC. In case he is not the manufacturer, **he shall provide a copy of the COC received from the original manufacturer.**

The MISR shall not be used in lieu of a CoC.

Part 16 - Completion and Distribution of the NSPA Materiel Inspection Shipping Report (MISR)

1. Completion.
 - a. The MISR is printed on Form 194. The MISR is available in the Internet. United States Contractors may use DD Form 250, or a modification thereof in lieu of the MISR.
 - b. The Contractor shall complete all blocks, except blocks 22 and 27, which are reserved for use by NSPA.
2. Distribution.
 - a. Four copies inside the exterior container in which materiel is packed for shipment and four copies inserted in a waterproof envelope attached to the outside of the exterior container. If the shipment consists of more than one exterior container, the copies should accompany container n° 1.
 - b. One (1) copy to be attached to the Contractor's invoice.
3. If the Contractor is requested to use the services of a NSPA Shipping Agent, he shall provide the NSPA Shipping Agent with three (3) copies of the MISR.

Part 17 - Item Identification

1. Whenever circumstances require the substitution of an item or part thereof ordered by a Call Order under this contract, the Contractor must refer the proposed substitute to NSPA for approval, together with the NATO Stock Number (if available), Part Number of the proposed substitute, and if applicable, drawing built standard for the part number, including revision details and all major and minor waivers and deviations incorporated.
2. When both NATO Stock Number and Part Number identify an item, the NATO Stock Number will govern.

Part 18 - Marking

1. Labeling shall be done in accordance with the Unit of Issue (UOI). The UOI is reflected in the attached List of Items and will appear on the resultant Call Order. It is imperative that the Contractor adhere to the labeling requirements to ensure that materiel can be stored and dispensed in accordance with the UOI (Box, Case, Each etc.). The minimum labeling requirements (per UOI) are:
 - a. NSN;
 - b. Part Number
 - c. Quantity;
 - d. Unit of Issue
 - e. Contract Number

- f. Call Order Number
 - g. Description.
 - h. Shelf Life Expiry Date (if applicable)
2. The shipping documentation and all items or tags attached thereto will bear the following information: contract number and item number, Call Order number and item number, NATO stock number/part number and quantity.
3. All containers (interior and exterior) will show the contractor' shipment notification number.

Part 19 - Preservation, Packaging and Packing, Destination and Shipping Instructions

1. Unless otherwise indicated in the Military Specifications of an item (if applicable) or by special request, preservation, packaging and packing shall be performed in accordance with the best commercial practice, and be such to assure safe arrival at the final destination, and shall be capable to withstanding extended storage for at least one year under normal, unheated, inside storage conditions. Depending on the weight, volume and nature, the items should normally be delivered on euro pallet(s) at no cost to NSPA. The exterior container will show the number of the contract and the purchase order and be provided with a shipping label bearing the full shipping address as indicated in this purchase order. It is imperative that the production serial numbers, when assigned, be clearly marked not only on the item itself, but also on accompanying shipping documentation and the MISR.
2. Shipping notification
 - When the materiel is ready for shipment, the Contractor shall make the READY FOR SHIPMENT status change in the NLSE system. The Contractor shall contact the ordering Armed Force to provide the relevant shipping information and receive shipment instructions
4. Shipping instructions
 - When the materiel is shipped, the Contractor shall make the SHIPMENT status change in the NLSE system. This status change will trigger the automatic payment mechanism of the NLSE system – see Annex1: NLSE Digest for Contractors for further information

Part 20 - Subcontracts

1. For the purpose of this clause, sub-contracts means orders to sub-contractors for the services required in the performance of a Purchase Order. Material and supplies acquired by the contractor to perform a Purchase Order is governed by the Special Areas Clause of a Purchase Order.
2. The Contractor is solely responsible for the performance of the contract. No consent or approval by NSPA of any sub-contract or any provisions thereof shall be construed to be a determination of the acceptability of any sub-contract price or of any amount paid under any sub-contract or to relieve the Contractor of any

responsibility for performing the contract in accordance with its terms and conditions, unless such approval or consent specifically provides otherwise.

3. The Contractor shall not enter into any sub-contract with firms located outside NATO countries or having their legal residence outside NATO countries without the written approval of NSPA - Contracting Officer. Only in exceptional cases would NSPA consider such approval.
4. In order to ensure NSPA's rights under this contract the Contractor shall flow down the relevant requirements. i.e. those for which the Contractor has an obligation towards NSPA to any subcontract he will conclude.
5. Paragraphs 2 and 3 above are critical elements in the performance under this contract.

Part 21 - Intellectual Property Rights, Royalties and License Rights

1. The Contractor guarantees that he is in possession of all the necessary intellectual property rights in force in the countries where the items will be manufactured and / or services will be performed, under this contract and in other countries where the intellectual property rights are in force. The contractor possesses any licenses necessary for the performance of this contract and made any other arrangements required to protect NSPA from any liability for intellectual property rights infringement in said countries. The Contractor will at his expense hold NSPA harmless and fully indemnify NSPA against all damages, costs, charges, expenses and the like arising from or incurred by any reason of any infringement or alleged infringement of intellectual property rights in consequence of the provision of the service and / or materiel.
2. The Contractor agrees to assure himself that the Original Equipment Manufacturer(s) (OEM) or any entitled third party have not retained any intellectual property rights, before he provides services and / or manufactures items under the contract. NSPA shall not be liable for intellectual property rights infringements as may be caused by the Contractor.
3. The Contractor confirms that no payments of royalties or fees for intellectual property rights will be claimed by the OEM or any entitled third party for the services performed and / or materiel provided under this contract. In the event that such fees are claimed, the Contractor will bear any and all responsibility.
4. NSPA may publish pictures of the Items subject of this Contract on the NLSE Platform. The pictures will be visible to the NLSE customers.

The Contractor confirms that he is in possession of all the legal and intellectual property rights associated to these pictures or that he has received the appropriate authorization from the intellectual property rights owner to use them for NSPA purposes.

The Contractor confirms that he authorizes NSPA to publish the pictures on the NLSE Platform, and that NSPA and its customers will be fully protected from any potential liability for intellectual property rights infringements.

NSPA shall not be liable to any person or entity for any general, punitive, indirect, consequential or incidental damages, loss of profits or any other damages, costs or losses arising out of the use of the pictures.

Part 22 - Termination for Convenience of NSPA

The provisions applicable to “Termination for Convenience of NSPA” are available in the Internet.

Part 23 - Notification of Changes

1. If at any time during the performance of the contract, the Contractor considers that he has been directed to change or deviate from, in any way, the terms and conditions and/or the scope of this contract, he shall notify the contracting officer immediately. This notification shall as a minimum contain a cost breakdown of the additional costs to be incurred by the Contractor if he would implement the change/deviation and the related impacts on the terms and conditions. This information must be provided to such level of detail to allow the contracting officer to provide a comprehensive response within 14 days after receipt of the notification from the Contractor.
2. Following the submission of this notification, the Contractor shall diligently continue performance of the contract to the maximum extent possible in accordance with its terms and conditions as originally agreed.
3. NSPA shall not bear any responsibility for work performed by the Contractor outside the contract scope and NSPA shall not compensate the Contractor in either time or money for such work not specifically authorized or requested by the contracting officer in writing and subsequently included in the contract through a Supplemental Agreement.
4. Consequently, the Contractor cannot claim additional money and/or time for work performed during the performance of the Call Order, which has not been identified as part of the scope of this contract.

Part 24 - Performance of the Contractor in Time of Alert or War

The Contractor warrants that on the basis of information available to him, he is not aware of any national law or regulation, or any circumstances that might prevent him from fulfilling his obligations under this contract in time of alert or war.

Part 25 - Contract Administration

By the Contractor:

The names of the officials designated by the Contractor to administer this contract are:

Contractual matters

Company name: -----
 Address: -----

 Attn: -----
 Phone: -----
 Fax: -----
 email: -----

By NSPA:

All correspondence and communications pertaining to contract administration shall be sent to the following:

NATO SUPPORT AND PROCUREMENT AGENCY (NSPA)
 L-8302 CAPELLEN, LUXEMBOURG

Attn: LB-MMC (Damien CONE)
 Phone: (+352) 3063 5964
 Fax: (+352) 3063 4300
 email: Damien.conte@nspa.nato.int

Deliveries of materiel to NSPA installations on Friday afternoon, weekends and national holidays cannot be accepted without prior agreement.

Part 26 - Publicity and Public Relations

1. The Contractor shall not make any press release or public statement concerning this contract without the prior written approval of NSPA.
2. The Contractor agrees that, upon request NSPA may provide copies of the signed contract to officials of NSPA's customer nation who are or were directly involved in the procurement of the goods and / or services ordered hereunder.
3. The Contractor shall not use the name, emblem or official seal of NSPA / NSPO or any abbreviation of the name of NSPA / NSPO in connection with its business or otherwise, unless prior authorized in writing by NSPA

Part 27 - Integrity / No Bribe

1. NSPA draws the contractors' attention to the fact that it is strictly forbidden to offer gifts or other advantages to Agency staff members. This also includes any so-called end-of-year gifts, which cannot be considered to be advertising presents.
2. The Contractor shall advise NSPA if any ex-NSPA employees are engaged in the work under this Contract. This only applies to employment with NSPA less than two years before the date of involvement in this Contract.
3. If the Agency establishes that this ban has been disregarded, NSPA may terminate this contract at no cost to NSPA and your firm may be removed from the Agency's source file after the Agency has informed the relevant national authorities.

Part 28 - Warranty

1. The Warranty provisions as per NSPA General Provisions for Fixed-Price Contracts (Materiel) are supplemented to include the following:
2. The Contractor grants a warranty of two (2) years starting from the date of passage of title of the materiel to NSPA.
 - In case a defective item is accepted by the Contractor for return and replacement / repair under the warranty conditions of this contract, the transportation costs for the defective item from NSPA's customer to the place where replacement and correction will be made and back to NSPA's customer, will be borne by the Contractor.
3. The Contractor will comply with the applicable national and / or international regulations with respect to product liability.