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## DRAFT CONTRACT

### SCOPE OF CONTRACT: Provision of Warehouse 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.

## TABLE OF CONTENTS

This contract consists of:

- Terms and Conditions containing 24 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

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](http://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](http://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, transport, installation, inspection and training 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 2 years.

**Part 4 - Purchase Orders**

- 1 All items to be delivered by the Contractor under the contract shall be ordered by NSPA by Purchase Orders.
- 2 Purchase Orders shall be in writing, dated and numbered, and shall set forth:
  - The materiel to be delivered
  - The quantities
  - The unit prices and total prices
  - The delivery dates.
  - Transport requirements, if different from the ones specified in **Part 15** hereof.
- 3 The terms and conditions, as well as the fixed prices set forth herein shall govern all Purchase Orders issued against this contract. Amendments to Purchase Orders may be issued subject to the same conditions as the original Purchase Order. The Contractor will acknowledge receipt of the Purchase Order or amendment by signing the contractual document provided to this effect.
- 4 No Purchase Orders will be issued by NSPA beyond the period of the contract. In case of Purchase 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

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and conditions specified herein or in the relevant Purchase Order(s), unless otherwise notified by NSPA.

### **Part 5 - Prices**

The prices of this contract are firm fixed prices.

### **Part 6 - 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, NSPA will, upon the request of the Contractor, provide a copy of the form "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

### **Part 7 - Point of Delivery and Passage of Title**

- 1 The Contractor will deliver the materiel: DDP Ukraine (INCOTERMS 2010).
- 2 Title to the materiel will pass to NSPA at the point of delivery. 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 8 - 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 9 - Invoicing and Payment

1. The materiel delivered against under the terms of this contract shall be invoiced within 45 days after delivery.  
Invoices shall be sent as PDF-document to:

[CIMO@nspa.nato.int](mailto:CIMO@nspa.nato.int)

(Only invoices and credit notes are treated under this email address.)

ALTERNATIVELY as Hardcopy to:

NSPA  
CIMO OFFICE  
11 rue de la Gare  
L-8302 CAPELLEN

accompanied by the NSPA MISR duly completed as contractually called for and an evidence of delivery. Each invoice submitted and the attached MISR shall bear the contract and/or purchase order reference number, shall refer to the line items delivered. Faxed invoices will not be accepted for payment.

2. The following certificate shall be affixed to each invoice submitted:

*"I certify that this invoice is correct and just, that payment has not been received and that the price is exclusive of all taxes and duties from which NSPA is exempted."*

3. Payment

- a. Payment will be made within ..... (...) days with .. % prompt payment discount or thirty (30) days net \*\*will be completed at the time of contract award\*\* following receipt by NSPA of the Contractor's original invoice (2 copies) drawn for payment in the currency in which the contract is established, and containing the following information: contract number and item number, purchase order number and item number, description of the item, unit of issue, quantity, unit price and total price.
- b. NSPA will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.
- c. The payments will be made to the account identified by the Contractor at time of registration to the NSPA Source file.  
OR  
The payment will be made by NSPA as follows:
  - 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)

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For any other country: bank account number(s) plus any country-specific codes, if applicable.

### **Part 10 - 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 11 - 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. In case where an AQAP is specified, the Contractor shall meet its requirements. 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.

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<b>Part 12 - Completion and Distribution of the NSPA Materiel Inspection Shipping Report (MISR)</b>
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- 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.

<b>Part 13 - Item Identification</b>
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1. Whenever circumstances require the substitution of an item or part thereof ordered by a purchase 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.

<b>Part 14 - Marking for Shipment</b>
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1. The shipping documentation and all items or tags attached thereto will bear the following information: contract number and item number, purchase order number and item number, NATO stock number/part number and quantity.
2. All containers (interior and exterior) will show the contractor' shipment notification number.

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**Part 15 - 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 use the form attached for this purpose to the purchase orders raised against this contract to submit a shipping notification to NSPA, indicating the following information:

- per shipment: contractor's shipment notification number, expected date of delivery of shipment at destination;
- per materiel of the shipment: contract number and item number, purchase order number and item number, delivered quantity and, in case of partial delivery, the text "partial delivery".

3. Shipping instructions: DDP to seven (7) different locations in Ukraine.

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**Part 16 - 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 17 - 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.

#### **Part 18 - Termination for Convenience of NSPA**

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

#### **Part 19 - 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 purchase order, which has not been identified as part of the scope of this contract.

## **Part 20 - 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 21 - 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: ..-MMC ( ..... )  
 Phone: (+352) 3063 ....  
 Fax: (+352) .....  
 email: .....

*(Will be completed at time of award)*

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

### **Part 22 - 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 23 - 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 any of the provisions of this Part is not complied with, NSPA may terminate this purchase order 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 24 - Warranty**

- 1 The Warranty provisions as per NSPA General Provisions for Fixed-Price Contracts (Material) are supplemented to include the following:
  - a. The Contractor grants a warranty of two (2) years starting from the date of passage of title of the materiel to NSPA.
  - b. 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.

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2. The Contractor will comply with the applicable national and / or international regulations with respect to product liability.