

**ANNEX I - GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS**

**(MATERIEL)**

**1. Clause I - DEFINITIONS**

As used throughout this contract, the following terms shall have the meaning set forth below:

The term "NSPA" means "NATO Support and Procurement Agency", L - 8302 Capellen, Grand-Duchy of Luxembourg.

All correspondence and contacts concerning contracts for materiel shall be with the Procurement Officer/Buyer unless otherwise directed.

The term "NSPO Member Nation" means a member nation of the NATO Support and Procurement Organisation (NSPO).

The term "Customer Country" means that particular NSPO Member Nation for which NSPA is obtaining the materiel called for under this contract, or a part thereof.

The term "Contractor" means the party who has entered into this contract with NSPA.

The term "Contract" means the contractual instrument to which these General Provisions apply.

The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or order made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract or order thereunder.

**2. Clause 2 – CHANGES**

2.1 Except as otherwise provided in this contract, NSPA may at any time within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 stock numbers, part numbers or descriptions, if erroneous, or if a superseding part is desired by NSPA;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery, and;

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made

and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NSPA, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

2.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NSPA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

### **3. Clause 3 – ASSIGNMENT**

3.1 Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NSPA in writing. No such assignment shall become effective until the assignee has received written approval from NSPA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NSPA will not unreasonably withhold any such approval of assignment.

3.2 NSPA shall have the right to assign in part or in full to another NATO Subsidiary Body, NATO Agency or any other entity acting on behalf of NATO the rights, obligations, title and interest in and to this Contract. Such assignment will not entitle the contractor to any additional payments or any other consideration. NSPA will notify such assignment in writing to the Contractor.

### **4. Clause 4 - PATENT INDEMNITY**

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the items will be manufactured, under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NSPA from any liability for patent infringement in said countries. The Contractor will notify NSPA of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

**5. Clause 5 - SECURITY**

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

- ensuring that no such document is accessible to any person not entitled to knowledge of such document;
- complying with the national security regulations currently in force in its country;
- complying with any special NATO or NSPA security Operating Instructions which may be supplied by NSPA.

**6. Clause 6 - TAXES AND DUTIES**

6.1. NSPA, as a subsidiary body of NATO, is, by application of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa on 20 September 1951 (the Ottawa Agreement), exempt from all taxes and duties, including taxes on the sale of movable and immovable property, which form part of the price such as VAT, in relation to purchases made for the official use of NATO.

6.2. Where applicable, the Contractor shall invoice NSPA without VAT in consideration of any applicable exemption, including the exemption from indirect taxes under the Ottawa Agreement. The Contractor may request NSPA to provide an official exemption certificate to confirm that the exemption provided for in the Ottawa Agreement is applicable.

6.3. NSPA possesses a VAT number issued by the Government of Luxembourg, which is LU 15413172.

6.4. Where no exemption under the Ottawa Agreement is applicable, the Contractor shall use the NSPA VAT number to issue an invoice exclusive of VAT. Where the intracommunity triangular regime applies, the Contractor may request from NSPA the VAT number of the final beneficiary of the goods provided by the Contractor.

6.5. In cases where paragraphs 6.2 and 6.4 do not apply, the VAT will be charged by the Contractor as identified in its proposal and shall be paid by NSPA. Failure of the Contractor to have identified in its proposal the applicable taxes or duties, or correct amount of such taxes or duties, may result in the Contractor being liable for the payment of such taxes or duties.

6.6. If as a result of a change to this Contract in accordance with Clause 2 or in legislation implemented after the effective date of this Contract, the Contractor is compelled to pay any readily identifiable tax or duty in relation to this Contract, it will indicate such tax or duty as a separate item of cost on its invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

6.7. The Contractor shall not be responsible for differences between the amount of VAT specified or determinable in the Contract and the amount of VAT claimed by fiscal authorities if such difference is due to unforeseen legislative amendments or to erroneous information provided by NSPA.

**7. Clause 7 - SPECIAL AREAS**

7.1 Except as otherwise provided in this contract, the Contractor shall not, in the performance of this contract, subcontract with firms located in countries which are:

7.1.1 subject to a formal trade embargo to be observed by NATO;

7.1.2 known to disregard international trade conventions in respect of copyright;

7.1.3 under communist control:

- China (PRC)
- Cuba
- Laos
- North Korea
- Vietnam.

**8. Clause 8 – WARRANTY**

8.1 Except as otherwise provided in this contract, the items called for by this contract shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship for a period of two years.

8.2 The provisions of this clause are equally applicable to any item replaced under warranty.

8.3 The warranty period shall be extended by a period equal to the time taken by the Contractor to repair or replace the item under warranty. This warranty is only applicable insofar as NSPA shall have complied with such conditions of storage, preservation, removal from storage, use and operation, and maintenance of the item as have been reasonably recommended by the Contractor.

8.4 In the event that all or any of the defects enumerated in paragraph 8.1 shall be confirmed in respect of an item covered by the warranty, whenever discovered, the Contractor shall at its own expense, including all transportation costs associated with the warranty claim. Replace or correct the item, or lots of such item, which is/are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

8.5 Alternatively, the Contractor shall, if NSPA so wishes, credit or reimburse it with the value of the item at the purchase price paid by NSPA, plus any costs incurred by it for the delivery of the defective item and its return to the Contractor.

8.6 Within thirty days of the receipt of a warranty claim, or as otherwise agreed, on the item in respect of which the claim is made, the Contractor shall assess the validity of the claim. The repaired or replaced item shall be sent to NSPA with the minimum of delay and in any case not later than six weeks after receipt of the defective item, or as otherwise agreed. In the event that the Contractor shall not have disputed the validity of the claim within the said thirty days, the claim shall be considered as accepted by the Contractor.

8.7 NSPA shall have the right, without invalidating the warranty, to repair a defective item in accordance with the overhaul manual or other written instructions of the Contractor.

This right shall not prejudice the possibility on the part of the Contractor to dispute the validity of the claim under warranty. To this end, all reasonable facilities shall be granted to the Contractor or his / her representatives.

8.8 The Contractor expressly authorises that NSPA may offer the whole or part of these warranty conditions to third parties with the intent that such third parties and the Contractor shall be bound thereby as if both were parties to a contract made between them in which this warranty were expressly set forth.

## **9. Clause 9 - DEFAULT**

If the Contractor fails to deliver the materiel within the time specified, formally seeks protection from bankruptcy, becomes bankrupt, or otherwise fails to comply with his / her obligations under this contract, NSPA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NSPA. Thereafter, NSPA may procure or otherwise obtain the items so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NSPA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his / her obligations under this contract, unless Contractor's failure to perform is due to causes beyond his / her control and without his / her fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

## **10. Clause 10 - TERMINATION FOR CONVENIENCE OF NSPA**

In the event NSPA determines that an item, or items, ordered is (are) no longer required, the Contractor undertakes to use its best endeavours to cancel the supply of such item, or items, on terms as favourable to NSPA as can be granted or obtained, as more fully set forth in this contract.

## **11. Clause 11 – DISPUTES**

11.1 Any dispute arising out of this contract shall be settled by arbitration.

11.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his/her desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NSPA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceeding, by the Secretary General of the Permanent Court of Arbitration in the Hague.

11.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

11.4 Any arbitrator must be of the nationality of any of the member nations of NATO and shall be bound by the rules of security in force within NATO.

11.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he / she is of the nationality of one of the member nations of NATO, be bound by the rules of security in force within NATO, if he / she is of another nationality, no NATO classified documents or information shall be communicated to him.

11.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

11.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

11.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

## **12. Clause 12 - DISCREPANT SHIPMENTS**

12.1 The Contractor recognizes that the materiel of this contract has been ordered by NSPA for the purpose of eventual delivery by NSPA to one or more of the NSPA customers. For this reason the Contractor agrees that where shipments of materiel susceptible to complete and immediate inspection at the place and time of delivery are concerned, submission by NSPA of claims to it in the form of Discrepancy Reports relating to (a) overages, (b) shortages, (c) condition, (d) misidentification and, (e) damages will not be protested solely on the basis of failure of timely notification if they are submitted within twelve (12) months of the date of delivery to NSPA of the said materiel. However, where sealed shipments are concerned, i.e. shipments of materiel which because of their nature must remain in sealed containers until required for use, the Contractor agrees not to protest such Discrepancy Reports solely on the basis of failure of timely submission if submitted within eighteen (18) months of the date of delivery to NSPA of the said materiel. This provision shall in no way be interpreted so as to modify in any way any guaranty or warranty of any type concerning the said materiel and given by the Contractor elsewhere in this contract or applicable to identical materiel in the normal course of the Contractor's sales to other customers.

12.2 The submission of Discrepancy Reports by NSPA to the Contractor under the provisions of this clause requires the Contractor to investigate such Discrepancy Reports if submitted within the above-mentioned time limits, but does not imply that the Contractor will accept responsibility for them.

## **13. Clause 13 - GOVERNING LAW**

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

**14. Clause 14 - EXAMINATION OF RECORDS**

14.1 This clause is applicable to this contract only:

14.1.1 if the price, or any of the prices, to be paid for the materiel to be furnished hereunder is/are other than (a) firm fixed price(s); or

14.1.2 if this contract is terminated by NSPA, in whole or in part, and the Contractor submits a termination claim as a result thereof; or

14.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

14.2 The Contractor agrees that NSPA or any of its duly authorised representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

14.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

14.4 The period of access and examination described in 14.2. and 14.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

**15. Clause 15 – MISCELLANEOUS**

15.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

15.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He / she unreservedly accepts all the terms thereof.

15.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

15.4 All written correspondence and reports by the Contractor to NSPA shall be in the language in which this contract is written.